

SPECIAL REPORT: THE HEALTH CARE DECISION

TIME

A black and white profile photograph of Justice Antonin Scalia, showing the right side of his head and face. He is wearing a dark suit jacket over a white shirt. The background is dark and out of focus.

# Roberts Rules

What his landmark decision means for Obama, Romney, the court—and you

BY DAVID VON DREHLE



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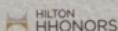
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## EUROPE

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# Editor's Desk

## Carving Out the Middle Ground



JOHN MARSHALL, THE greatest of all Chief Justices, famously wrote that it is the job of the high court "to say what the law is." It is not, he implied, the province of the court to say whether a law is wise or sound or good for the people; it is simply to rule on whether or not it is constitutional. Chief Justice John Roberts was channelling his groundbreaking predecessor when he wrote his landmark opinion on the Affordable Care Act. (He actually cites Marshall by name twice.)

Roberts' decision is also a primer on the roles of the court and of government. He begins by reaffirming that the national government is one of "enumerated powers"—that is, the Constitution lists the powers of the federal government, and if one is not on the list, the government doesn't have it. Roberts found his way through the mammoth Affordable Care Act and decided that although the government does not have the power to make people buy health care, it does have the power to tax them for not doing so. It's a fine line and in many ways one he drew himself.

The court's decision is so important that we moved up our publishing schedule to create this special issue in order to get it to you as soon as possible. So we closed two issues this week. This one features a brilliant cover story by David Von Drehle on the ruling, four essays by former solicitors general from across the political spectrum, a commentary by Joe Klein on how Obama can now fix his own law and a graphic on how the Affordable Care Act affects you. Our goal is to make sense of a very complex decision that ultimately affects every American.

*Rick*

Richard Stengel, MANAGING EDITOR



### THE CONVERSATION

## 'The revolution is still on!'

Many Facebookers, including **Jordan Momani**, disagreed with *TIME*'s July 9 cover line about the Egyptian elections, "**The Revolution That Wasn't**," and took to the social-media website to let us know they were still fighting. "These generals are just part of the Mubarak regime," added **Mahmoud Nofal**. "That's why they should leave." But the story that sparked the most discussion was not about a mass uprising but rather the death of an artist. Oscar winner **Tom Hanks'** appreciation of writer and director **Nora Ephron**, who died of cancer at 71, was subtitled "**A life of voice and detail**." "The guaranteed-to-be-wonderful essay by Tom Hanks about working with the late Nora Ephron has arrived," said **MediaBistro**. "It's as bouncy as their various movie collaborations." Readers loved it too. "Without sounding too corny," wrote **Marcela Garcia**, "this was beautiful." **Marc Robinson** may have offered the majority opinion, with his simple, if sly, comment: "Something in my eye."



### Finding *TIME*

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Eat the competition for breakfast. With milk.

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got milk?

Nourish every day.

## LIGHTBOX

**Southern Comfort**

Atlanta's High Museum of Art commissioned British photographer Martin Parr to document the American South in a series of images that inspired wonder on our photo blog. Though one reader thought Parr was too focused on "fat people eating," many were struck by his eye for everyday eccentricities at cookouts, left, and other places. Said @conorjustice: "You have to love the quirky yet rather wise work of Martin Parr." To see more of his images, go to [lightbox.time.com](http://lightbox.time.com).



## MAIL



*The Supreme Court ruling to uphold key parts of Arizona's controversial immigration law reignited a lively discussion among readers about our June 25 cover story on undocumented immigrants.*

Re "Not Legal, Not Leaving" [June 25]: The U.S., land of the free, has the power to lead on social issues. I hope Obama will be able to change the way people think about the immigrants who have contributed to the growth of their country.

Jon Andrew R. Sison, MANILA

There is a huge difference between children who are placed in a situation they have no way out of and adults who knowingly break the law. Those adults who jump the fence or swim the river should be rounded up and deported. But that

constitutes only a small percentage of what the debate needs to be about.

Rainer\_Dammers, on TIME.com

Kudos to Jose Antonio Vargas and TIME for a thoughtful and compelling piece on undocumented Americans. However, the graphic on page 39 should have made clear that the paths to legal residency

**'There is no process. There is no way for people like us to come forward and say we're here.'**

**JOSE ANTONIO VARGAS**, the cover story's author, responding to a reader's question about why he hasn't applied for citizenship, during a June 20 video chat. The event, which was streamed live on TIME.com, was our first Google Hangout on Air. Look for more of them in the weeks ahead

shown are only for people who are outside the U.S. or who entered the country with a visa. For the millions who arrived here without permission, obtaining a green card upon marriage to a U.S. citizen requires the immigrant to leave the country, typically triggering a 10-year bar on his or her return. Getting that bar lifted involves proving a case of extreme hardship to the citizen, a costly and difficult procedure that can leave families separated for many months or years. It is a lengthier and much more difficult process than the graphic suggests.

Ruth Gomberg-Muñoz,  
Assistant Professor of Anthropology,  
Loyola University Chicago, CHICAGO

## SETTING THE RECORD STRAIGHT

→ In "Holy Strategist," we said *Just Love* by Margaret Farley, an emerita professor at Yale and Catholic nun, contains "jarringly graphic descriptions of sex acts" [July 2]. While the book discusses phone sex, masturbation and gay sex, it does not describe those acts in graphic detail.

## WRITE TO US

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# School buildings that make a lasting impression.

Siemens answers for building technology provide a brighter future for students and the environment.

At 8:00 a.m. every day, the first period bell rings across a Tennessee school district. As desks fill up and notebooks open, the classrooms look nothing out of the ordinary. But here, teachers and textbooks aren't the only things that will make an impact on the lives of students far into the future.

Utilizing intelligent building technology from Siemens, the school district made improvements that drastically reduced CO<sub>2</sub> emissions, cut energy costs by \$2.9 million annually and gave every one of their 75,000 students attending the improved buildings a healthier, more comfortable learning environment.

Siemens guaranteed performance contracting solutions, including updated HVAC systems and retrograde lighting, helped schools in Colorado, Pennsylvania and New York yield similar results.

Our technology is working to improve the nation's schools from the inside out. Because when we create more sustainable buildings, we're building more sustainable cities.

Somewhere in America, our team of more than 60,000 employees spends every day creating answers that will last for years to come.

# Briefing

'It is not our job to protect the people from the consequences of their political choices.'

1. **JOHN ROBERTS**, Chief Justice of the U.S., in the opinion he authored that upheld President Obama's health care law; he was joined by four other Supreme Court Justices in the 5-4 decision

**'For all of you who saw me as a groundbreaker, I'm sorry I couldn't carry the ball over the finish line.'**

2. **ANN CURRY**, telling viewers she would be leaving the *Today* show after less than a year as co-host; Curry has said her departure was not her idea but NBC's

'In some places, you cannot tell the blood from the vegetables.'

3. **AHMED NOURI**, Iraqi police officer, after bombs in and around Baghdad killed 13 and wounded more than 50 in one day

**'There is no sense in conducting theoretical debates when the house is on fire.'**

4. **MARTIN SCHULZ**, president of the European Parliament, urging European officials to move on from discussing euro bonds and find a sensible solution to the euro zone's fiscal crisis

'Whatever the politics, today's decision was a victory for people all over this country.'

5. **PRESIDENT OBAMA**, after the Supreme Court upheld his health care law



**65%**

Percentage of Americans who believe President Obama could handle an alien invasion better than Republican rival Mitt Romney could

**\$6 BILLION**

Estimated losses from JPMorgan's bad trades, up from an initial \$2 billion estimate

**17%**

Increase in U.S. corn prices in June, as heat and drought plagued the Midwest



**300,000**

Population of Stockton, Calif., which became the largest American city to file for bankruptcy

Briefing

# LightBox



**Drops in the bucket**

*A helicopter dumps water on a wildfire raging west of Colorado Springs. The blaze—whipped by gusting winds—has forced some 35,000 people to evacuate their homes*

Photograph by Rick Wilking—Reuters  
lightbox.time.com



Briefing

# LightBox

## Summer's splash

A swimmer dives into the Thames at a triathlon competition held near London's Canary Wharf. The British capital will host the Olympics in little less than a month

Photograph by Peter Cziborra—

Action Images/Zuma Press

[lightbox.time.com](http://lightbox.time.com)





Briefing

# LightBox





#### Cracked earth

A Pakistani woman walks across a dry riverbank near the capital, Islamabad. A heat wave, coupled with a lack of rain, has led to some parts of the country suffering 20-hour power cuts.

Photograph by B.K. Bangash—AP  
[lightbox.time.com](http://lightbox.time.com)

# World



## Twilight of the Great Media Mogul?

**1 | U.S.** The board of Rupert Murdoch's News Corp. approved a plan on June 27 that would split the conglomerate's publishing and entertainment divisions into two separate companies. Book publisher HarperCollins and Murdoch's roughly 175 newspapers (including the *Wall Street Journal*, *The Times* of London and the *New York Post*) will form one of the new companies, while the other will boast 20th Century Fox and hugely lucrative cable channels such as Fox News, FX and National Geographic. Although Murdoch—who says he intends to maintain control over both companies—has compared the move to the 2006 Viacom-CBS split, the News Corp. reconfiguration will look more lopsided: the publishing group accounts for only about 10% of current profits. The rationale for the split, News Corp. says, is that bifurcating the holdings will simplify management and increase shareholder value, which dipped following the embarrassing phone-hacking scandal in the U.K. that implicated a number of News Corp. publications. Still, some analysts have pointed to this plan as an acknowledgment that Murdoch's newspapers, which are dear to the octogenarian, are struggling to keep up with the profitable entertainment arm and are therefore better off separated.



Murdoch has been stung by the U.K. hacking scandal

Newspapers once formed the bedrock of Murdoch's empire

## A Very New Government

**2 | EGYPT** Now that Mohamed Morsy is Egypt's first democratically elected President, he can begin to carry out the traditions of his office, including naming a Cabinet. Despite his critics' concerns about an Islamist government, Morsy has vowed to appoint a diverse selection of people, including a woman, a Christian and members of the opposition. Governing with support from a broad coalition will help him in the contest for Egypt's future against the reigning generals from the Supreme Council of the Armed Forces.

### Morsy's Circle



Mohamed ElBaradei has been mentioned for Prime Minister



Field Marshal Mohamed Hussein Tantawi will remain Defense Minister



Abul Ela Madi, an Islamist, could be one of three VPs



Naglaa Ali Mahmoud has vowed to be a humble First Lady

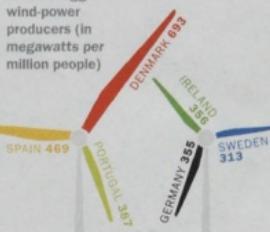
## One-Child Woes

**3 | CHINA** In a case that sparked controversy over China's one-child policy, a woman forced to have a late-term abortion continues to face an ordeal, as does her family. Feng Jiamei—whose pregnancy was terminated at seven months because she had violated the one-child law—said she was being kept in a hospital against her will. Meanwhile, her husband went into hiding after he and relatives were harassed by local authorities and residents of the northwestern province of Shaanxi. State-run media reported that a county-level family-planning official had been sacked and others punished following an investigation that found they used "crude means" to persuade Feng to have the abortion. The one-child policy, adopted in 1979, aims to control China's population of 1.3 billion.

## Easy Being Green

**4 | DENMARK** E.U. countries are leading the charge in wind energy, and those turbines may signal hope on the horizon. With oil prices rising, economies faltering and that pesky ozone hole getting bigger, turbines provide clean energy, thousands of jobs and a fancy new skyline.

World's biggest wind-power producers (in megawatts per million people)

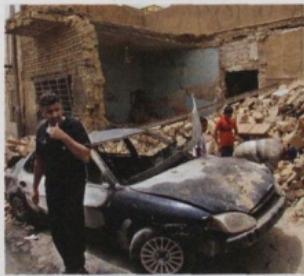


SOURCE:  
GLOBAL WIND  
ENERGY  
COUNCIL



## A Royal Handshake

**5 | NORTHERN IRELAND** Queen Elizabeth II waves to a crowd in Enniskillen, Northern Ireland, while on a tour marking her Diamond Jubilee. In a moment steeped with symbolism, she shook hands in Belfast with Martin McGuinness, a Northern Irish politician and former commander of the Irish Republican Army, the militant group that waged a long, violent campaign against British rule.



The scene at a Baghdad market after a car bomb exploded on June 28

## Bad Old Days

**6 | IRAQ** Just six months after the last U.S. troops withdrew, the ugly specter of sectarian violence loomed once more over Iraq. A spate of bomb attacks across the country, including a series of blasts in Baghdad on June 28, targeted markets and holy sites frequented by Iraqi Shi'ites. Almost 200 people were killed in June alone. A power-sharing dispute between Iraq's Kurdish and Sunni parties and the largely Shi'ite coalition of Prime Minister Nouri al-Maliki has exacerbated tensions.

**\$1  
MILLION**

## ISRAEL

Prize money for the new annual Genesis award, intended to be the "Jewish Nobel." The money will be awarded for excellence in virtually any field to people who attribute their achievement to Jewish values.

**U.K.**  
*'Life is a race.  
And I'm,  
gonna win.'*



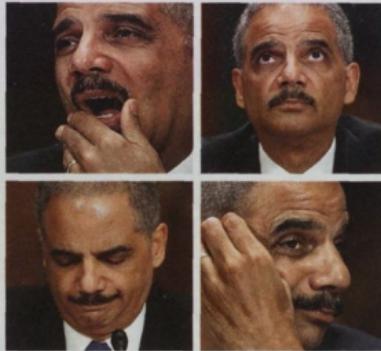
**MUSE**, in lyrics from "Survival," the official song of the 2012 London Olympic Games. In addition to being the primary theme for all international TV spots, the British band's song will be played when athletes enter the Olympic stadium and during lead-ups to the medal ceremonies.

# Nation

## Between the Lines

By Mark Halperin

► **What the Supreme Court's health care decision changes:** Republicans move "Obama is a huge taxer" to the top of their message pile ... ► Mitt Romney will come under more pressure to explain how he might maneuver an Obamacare repeal through a divided Congress if he's elected President ... ► Obama can take a victory lap side by side with his party's elected officials and interest groups ... ► Republicans will see a fundraising boost from conservatives who now need a November electoral sweep to stop the law from being fully implemented ... ► The perception that George W. Bush's legacy includes fundamentally reshaping the Judicial Branch gets a big, fat asterisk ... ► The court becomes less of a lightning-rod election issue, given John Roberts' willingness to stray from the conservative side ... ► **What the health care decision leaves unchanged:** The President still has the Affordable Care Act as his signature achievement ... ► Republican candidates from Romney on down will run against the ACA, while few Democrats will feature health care as a prominent part of their campaigns ... ► States will continue to take steps toward the law's full implementation in 2014 ... ► **What the Democrats and Republicans are wondering about in the aftermath:** What happens to insurance premiums between now and November? ... ► Will the court's imprimatur make the law's individual mandate more popular? ... ► Can the President put Romney on the defensive over his own health care accomplishment, the similar Massachusetts measure he signed into law as governor? ... ► Do any Republicans break ranks and say that with the Supreme Court's validation, they are ready to support the law? ... ► Do any Democrats break ranks and say they now regret voting for passage?



## Misplaced Contempt?

The Supreme Court's health care ruling wasn't the only historic decision on June 28: hours later, the House of Representatives voted to hold U.S. Attorney General Eric Holder in contempt—the first time Congress has so sanctioned a sitting Cabinet member. Holder was cited for refusing to hand over documents related to Operation Fast and Furious, a Bureau of Alcohol, Tobacco and Firearms probe that began in 2009. Representative Darrell Issa and fellow Republicans have accused ATF agents of "gun walking"—allowing dealers to move weapons from the U.S. to Mexico rather than intercepting them, in hopes that the guns would create a trail to major traffickers.

The vote came a day after *Fortune* published findings of a six-month investigation concluding that—contrary to popular belief—agents did not intentionally allow guns to walk. Instead, *Fortune* said, agents' efforts to make arrests were "hamstrung by prosecutors and weak laws." The findings suggest that a key premise of the investigation by the GOP-controlled Oversight Committee is off base. Despite the contempt charge, it appears unlikely Holder will be prosecuted. —ERIC DODDS



### WORD OF THE WEEK

## cash mob

*n.* group of consumers that supports a local retailer by showing

up to shop at the store on a designated day

*See: Advocates for living local who are putting money behind their philosophy. Some mobs vote on which businesses most need the cash; many coordinate their sprees through social media*

## Suburban Slowdown

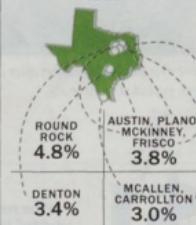
The high-rise is trumping the picket fence. For the first time since the 1920s, U.S. cities are growing faster than suburbs, according to new census data. Twenty-seven of the 51 largest U.S. metropolitan areas exceeded their suburbs in population growth from April 1, 2010, to July 1, 2011.

Brookings Institution demographer William Frey says it's the culmination of a trend that started around 2007: "This year shows the convergence of suburban-growth slowdown with city-growth gains. They've reached a kind of tipping point."

Historically, suburban growth has been fueled by young urban families leaving the city. But in the tough economy, young adults are opting to stay in city rentals rather than purchase suburban homes. Meanwhile, the normal influx of job-seeking graduates continues. Youths keep moving in—but nobody's moving out.

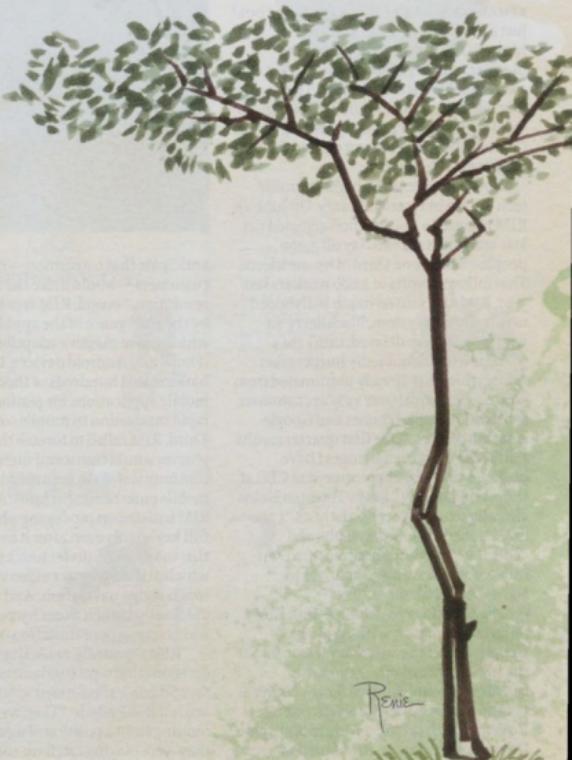
New Orleans topped the census list as the fastest-growing city, with a 4.9% increase in population. (The population is now at 79% of its pre-Katrina level.) But it was Texas that dominated: eight of the 15 fastest-growing cities are in the Lone Star State. —ELIANA DODTERMAN

### Boombtowns of Texas



PERCENTAGE INCREASE IN POPULATION  
APRIL 1, 2010–JULY 1, 2011. SOURCE:  
U.S. CENSUS BUREAU

*Let your inner glow, glow.  
Get out of the sun. Grab some shade.  
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# Tech

## BlackBerry Crushed. RIM's failure to keep up with Apple has turned it into a tech basket case

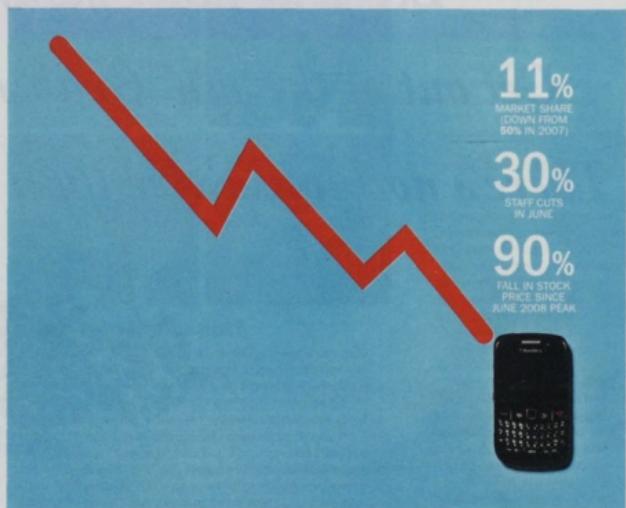
By Sam Gustin

**REMEMBER WHEN BLACKBERRY WAS COOL?** Just a few years ago, the Research in Motion (RIM) smart phone was the premier mobile gadget on the market and a veritable tech status symbol. The BlackBerry was so ubiquitous among Wall Streeters, corporate types and Capitol Hill staffers that it earned the nickname CrackBerry.

Now it's become the highest-profile tech failure in recent memory. On June 28, RIM reported a \$192 million adjusted net loss and said it plans to lay off 5,000 people—about one-third of its workforce. That follows layoffs of 2,000 workers last year. RIM also said its much ballyhooed new operating system, BlackBerry 10, would be further delayed, until 2013.

That will undoubtedly hurt market share, which has already plummeted from 50% in 2007 to just over 11% as customers switched to Apple iPhones and Google Android devices. "Our first-quarter results reflect the market challenges I have outlined since my appointment as CEO at the end of January," RIM's Thorsten Heins stoically told Wall Street analysts. "I am not satisfied with these results and continue to work aggressively ... to implement meaningful changes to address the challenges."

The BlackBerry's decline—and RIM's failure to keep pace with Apple and Google—offers a cautionary lesson about the importance of innovation in a consumer-technology market evolving at breakneck speed. The problems were threefold. First, after coming to dominate the corporate market, RIM failed to



anticipate that consumers—not business customers—would drive the smart-phone revolution. Second, RIM was blindsided by the emergence of the app economy, which drove massive adoption of the iPhone and Android devices. Developers have created hundreds of thousands of mobile applications for platforms, fueling rapid innovation in mobile software. Third, RIM failed to foresee that smart phones would transcend mere communication to become full-fledged mobile entertainment hubs. As a result, RIM insisted on producing phones with full keyboards even after it became clear that many users prefer touchscreens, which allow for better video viewing and touch-swipe navigation. And when RIM did finally launch a touchscreen device, it was seen as a poor imitation of the iPhone. "RIM repeatedly made strategic decisions that were fundamentally wrong," says Silicon Valley-based technology analyst Rob Enderle. "They were either fighting from a position of weakness or they were playing catch-up and letting a

competitor dictate their strategy. Never let the other guy dictate your strategy."

It was a failure of vision—and innovation. Whereas RIM saw the BlackBerry as a fancy, e-mail-enabled mobile phone, Apple and Google envisioned powerful mobile computers and worked to make sending e-mail and browsing the Web as consumer-friendly as possible. They also understood that the key to mass adoption would be to build a platform for developers to create applications. In short, RIM failed to heed the example of Apple's late CEO Steve Jobs, who elevated the user experience to Olympian heights.

RIM has paid a steep price. As recently as 2009, the BlackBerry maker was named by *TIME* magazine as one of the 100 fastest-growing companies in the world, with earnings exploding by 84% a year. Now RIM's stock price has collapsed by a vertigo-inducing 90% since its June 2008 peak, to its current level of less than \$10. The age of the frantic dual-thumb warrior is over.

# Olympics



## The Golden Ticket

Olympic passes are expected to generate more than \$1 billion this year. Here's what that money buys

By Kharunya Paramaguru

### Specially priced tickets

Thanks to a special pricing scheme, attendees 16 and under pay their age for a ticket, in pounds; those over 60 pay a flat rate of \$25. Some newborns, however, will need full-price tickets for certain venues—a move that's drawn ire from parents who got pregnant after buying tickets and assumed babies could sit free.

**\$4.65 billion**  
OLYMPIC HOSPITALITY VALUE

### premium perks

For a minimum of \$457, "premium" ticket holders can access the \$11.6 million hospitality pavilion—created especially for the Games—which offers champagne receptions, four-course lunches and an open bar.



### WHAT IT COSTS TO GO TO ...

**\$31**  
Opening sessions for table-tennis and BMX-biking finals

**\$116**  
Modern pentathlon

**\$194**  
Women's soccer final

**\$232**  
Equestrian jumping final  
% OF ALL UNSOLD TICKETS ARE FOR SOCCER

**\$698**  
Men's gymnastics final

**\$698**  
Women's swimming final

Sources: London 2012 LOCOG Fact Pack; Prestige Ticketing; Guardian; Operation Podium; Reuters; Transport for London

### Scalping protection

Each ticket touts holograms, bar codes and booklet names to prevent forgeries and price markups—a crime punishable by a \$31,000 fine. That hasn't stopped some official resellers though. Ukrainian officials blamed their rep's scalping on "a state of inebriation."

**970**

TICKET SELLERS BEING INVESTIGATED FOR SCALPING OR FORGERY

### Other alleged offenders:

Serbia's official ticket reseller, which tried to sell 1,300 tickets for \$124,100 to a Middle Eastern buyer; China's reseller, which offered top-level seats for over \$9,300 each; and Cyprus and Israel's reseller, which offered 525 seats for \$102,400



**\$3,119**

Opening and closing ceremonies

# Business

## Retail Therapy

Health insurance is coming to a big-box discount store near you

By Josh Sanburn

FOR MOST AMERICANS, CHOOSING A health care plan or home loan—unlike picking peanut butter or shampoo off a supermarket shelf—can be an overwhelming chore. But consumer-friendly Costco, known for simple one-stop shopping at deep discounts, is betting that its customers will want to buy both on their regular grocery run.

In April, Costco, in partnership with Aetna, the U.S.'s third largest health insurer, began offering individual health care policies to its customers in nine states—Connecticut, Illinois, Texas, Michigan, Virginia, Georgia, Arizona, Pennsylvania and Nevada—as well as lower co-pays for customers who use Costco pharmacies. Aetna, which says the plans are about 5% cheaper than the individual policies that it normally offers, plans to add more states later this year.

Insurers, financial firms and retailers—anticipating that millions of uninsured people will have to buy health care by 2014 under the now Supreme Court-approved Affordable Care Act—have been experimenting with ways to snag new customers. Insurers like Humana, which now offers prescription-drug plans through Walmart, and Aetna, which also teamed up with Best Buy this spring to sell supplemental wellness plans, have been making landgrabs at big-box stores. Other insurers, like Highmark in Pennsylvania, BCBS of Florida and New York's United Healthcare, have opted for their own brick-and-mortar outfits.

For Aetna, the Costco deal—which includes a choice of five Aetna medical plans and dental coverage—is a chance to shimmy

up to a trusted retail brand and Costco's 40 million U.S. members, many of whom own small businesses that don't have group health care. For Costco, which gets the lion's share of its profits from yearly membership fees, the motivation isn't big commissions, which will come under pressure from health care reform. Instead, the health care offering is an added draw to becoming a Costco member. Costco is "making very narrow margins on these plans," says Matt Arnold, a consumer analyst at Edward Jones. "But if they can identify something their members will find value in, they'll offer it just to justify signing a one-year membership."

The plans aren't a steal. Even with a 5% discount, the premiums are pricey compared with employee-based plans, they don't cover maternity leave, and the deductibles are sky-high. That's because Costco, unlike employers that cut insurance deals

**\$350**  
Costco's emergency-room fee, waived if admitted

**\$6,000-\$15,000**  
Deductible for a family plan's in-network care

**500-700**  
Number of home-loan inquiries Costco receives a day

for their workers, isn't ponying up a guaranteed number of its members to sign up for the policies. Still, consumers may like that Costco—which prides itself on striking selective high-volume deals—is vetting a complex product in a murky industry. "Right now, consumers trying to buy their own individual policy have a really hard time figuring out what they're getting," says Sabrina Corlette, a health-policy researcher at Georgetown University. A retail front could make the daunting task of buying a health plan seem more routine. Costco members can learn about the plans at in-store kiosks and then purchase them online. Such was the case with Costco's recent foray into home loans, which appeals to skeptics of big banks' lending practices. For consumers navigating the wild, wild West of health care reform, a little dose of retail therapy could go a long way.

FOR MORE,  
GO TO [time.com/ideasforbusiness](http://time.com/ideasforbusiness)



# REX GRIGNON makes EVERYONE SMILE.

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# Health & Science

## Cells for Sale. You're now allowed to pay for bone marrow. Could other tissues be next?

By Alice Park



HOW MUCH DO YOU THINK your bone marrow is worth? Or more accurately, how much would it take for you to consider selling it?

According to a U.S. federal court, that price is about \$3,000. In a landmark decision in a lawsuit brought by patients, parents and a donor-advocacy group, the court ruled it's now legal to buy bone-marrow cells—provided that the payment is made in the form of scholarship vouchers or donations to

charity and that the bone marrow, or blood stem cells, is obtained from the bloodstream, not the bone. (If extracted from the bone, it would be considered an organ under the National Organ Transplant Act, and selling it would be illegal in any form.)

Although the ruling affects a limited number of patients—there are roughly 15,000 bone-marrow transplants in the U.S. each year, primarily to treat cancers—the case could be used as a precedent to

argue for compensation for other organs, like kidneys. That would reopen a long-standing debate over the ethics of paying for body parts. More incentives would inevitably equal more available tissues and organs—a huge boon for people in desperate need of transplants. But morally, it's a slippery slope. "We don't allow people to buy and sell human beings. That's slavery," says Dr. Robert Klitzman, director of the bioethics program at Columbia University. "Should we allow people to buy and sell human body parts?"

For now, the legally sellable human body parts (see sidebar) aren't ones that could be used to cure fatal diseases, which prevents a market frenzy. But if the bone-marrow case starts changing that—and experts say it could—it might jump-start a dangerous trend in which lower-income groups are disproportionately targeted or incentivized to give up their marrow and people with rarer blood types demand more money for their valuable cells.

There are other solutions, though. Making people donors by default, as is the policy in Spain—instead of having them opt in—might help, says Klitzman. And giving donors other perks, like allowing their family members to move up the organ-transplant list, as is the case in Israel, could also encourage more people to give—all without a cent changing hands.

**Bone marrow joins a short list of body parts for sale. Here's how much you can legally get for your ...**



**HAIR** If you have 10 inches (25 cm) to spare, your tresses could be valuable to wigmakers, who pay anywhere from \$100 to thousands for an undamaged mane.

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**EGGS** These are in high demand at infertility clinics, where they are used in IVF. New York recently became the first state to allow women to get paid for giving eggs for stem-cell research.

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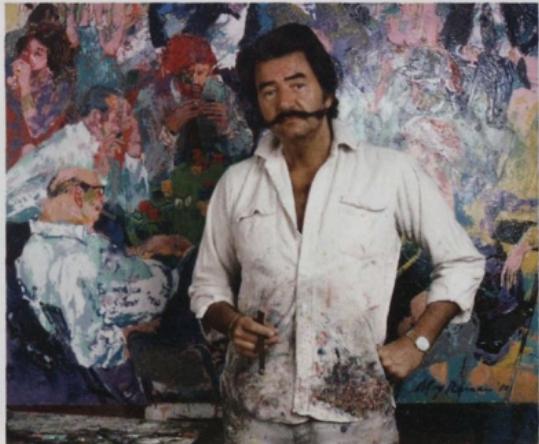
**SPERM** Payment for sperm has long been an easy way for men to earn cash, and the commerce has gone global. Sperm from the U.S. is in high demand in Australia and Canada, which bar anonymous donations.

**\$700+**

# Milestones



TIME commissioned a Neiman painting for its cover story on the 1972 Super Bowl



## DIED LeRoy Neiman

"The people that love my paintings... they're spectators, not viewers," LeRoy Neiman once said. "They look at it for the experience and the re-experience for themselves." Those spectators, drawn to Neiman's kinetically colored renderings of sporting events, from the Olympics to heavyweight title fights, helped make him one of the most popular American artists of the past 50 years. Neiman, who died June 20 at 91, was the artist-in-residence for the 1969 Super Bowl-winning New York Jets, sketched the 1972 world chess tournament on live television and drew Muhammad Ali so many times that the two collaborated on a book.

After serving as a U.S. Army cook in Europe in World War II (he also drew posters warning about venereal disease), Neiman moved to Chicago and became friends with Hugh Hefner. For half a century, he contributed to *Playboy* magazine, creating the Femlin, a curvaceous cartoon siren who wore only thigh-high stockings, high heels and opera gloves. For *Playboy*'s "Man at His Leisure" feature, he traveled the world, painting in exotic locations. But the most enduring image of Neiman was in a studio or on a sideline; mustache waxed past the edges of his cheeks, foot-long cigar in his mouth, making paintings guaranteed to be panned by critics, when they noticed them at all, even as they sometimes sold for small fortunes. —NATE RAWLINGS

**DIED**  
Lesley Brown, 64, the first woman to give birth to a baby conceived by *in vitro* fertilization; that daughter, Louise, born in 1978, now has a son of her own.

**APPROVED**  
A four-team seeded playoff that will determine the U.S. college-football national champion; it replaces the 14-year-old Bowl Championship Series final game.

**DIED**  
Lonesome George, 100 (est.), the last surviving

Pinta Island giant tortoise; his death in the Galápagos National Park marks the end of the purebred species.



## DIED Anna Schwartz

"Anna did all of the work, and I got most of the recognition," economist Milton Friedman said about Anna Schwartz when he accepted his 1976 Nobel Prize. Schwartz, who died June 21 at 96, was a crucial partner in Friedman's formulation of monetarism, the theory that the inflation rate and pace of the economy are largely determined by the size of the money supply. Together they produced the classic 1963 work *A Monetary History of the United States, 1867-1960*, which argues that misguided Federal Reserve policies caused the Great Depression. While current Fed Chairman Ben Bernanke considered Schwartz an inspiration, she did not always feel the same about him. *Critical of the Fed's bailouts of insolvent banks*, she said, "Firms that made wrong decisions should fail. The market works better when wrong decisions are punished and good decisions make you rich."

—OLIVIA B. WAXMAN



## DIED Gerhard Kallmann

Gerhard Kallmann, who died June 19 at 97, was a little-known instructor at Columbia University in 1962 when he and Michael McKinnell unexpectedly won the design competition for a new Boston city hall. It would prove to be one of the most argued-about American buildings of the past 50 years, cherished by many architects but not always by ordinary Bostonians. An energetic exercise in brutalist architecture, it consists of an asymmetrical group of cantilevered concrete boxes that provide work spaces for the mayor and city council, topped by bristling rows of windows, all resting on tall, flat piers. "It had to be awesome," Kallmann said of his building earlier this year. No argument there. It was. It is.

—RICHARD LACAYO



**DIED**  
Ivan Karp, 86, sharp-eyed New York City art dealer who nurtured the early careers of Andy Warhol, Roy Lichtenstein, Robert Rauschenberg and others.

**DIVORCING**  
Hollywood power couple Tom Cruise and Katie Holmes—known in the media as TomKat—after five years of marriage; the couple has one daughter, Suri.

**DIED**  
Don Grady, 68, musician and singer best known for playing Robbie, the heartthrob big brother on more than 300 episodes of *My Three Sons* from 1960 to 1972.

# Over a Barrel

A new age of cheap oil could undo the nascent green revolution

BY BRYAN WALSH

**T**HE 2012 ELECTION WAS SUPPOSED to be decided by sky-high gas prices. A gallon of regular gas cost more on average during 2011 than it ever had before, and in the first few months of the year, amid growing tensions in the Middle East, there seemed to be no limit to how expensive oil could get. But since Brent crude—a benchmark used by oil markets—reached \$128 a barrel in March, oil has been on a long downward slide, falling below \$90 a barrel, with investors expecting further declines. All of which means that gas could be closer to \$3 a gal. than \$4 come election time.

Lower oil prices are good news for President Obama and good news in general for the global economy. The U.S. will benefit especially from the fact that much of the new cheap oil production will come from domestic sources, including the shale oil found in booming North Dakota. But there's one major loser from inexpensive oil, especially if it's managed poorly—and that's the environment. The one clear benefit of reaching peak oil—when the world was expected to run out of easily accessible crude—was that it would force the world to find alternatives fast. But if we can count on cheap oil for years and even decades to come, it's going to be that much tougher to break our addiction to crude.

Since the burning of oil is responsible for about 40% of the greenhouse gases that come from fossil fuels—second only to coal—this has serious implications for climate change. NASA climatologist James Hansen may not have been far off when he predicted several years ago that tapping the vast Canadian oil sands—one of the new sources that will likely boost crude production in the years to come—could mean "game over" for the climate.

Why are oil prices falling so fast? Much of it is due to worries over a global economic slowdown. Recessions, after all, reduce demand for oil, and reduced demand means lower prices. But some analysts believe we could be on the brink of a major surge in global oil production,



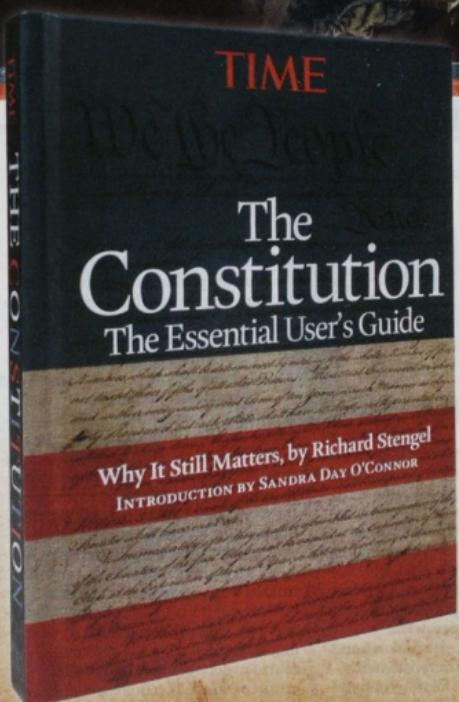
which would lower prices tremendously. A new report published by Harvard's Belfer Center for Science and International Affairs predicts that global oil output capacity is likely to grow nearly 20% by 2020, to some 110 million barrels a day. "Contrary to what most people believe, oil-supply capacity is growing worldwide at such an unprecedented level that it might outpace consumption," wrote Leonardo Maugeri, a former oil-industry executive and the author of the Belfer Center report. "This could lead to a glut of overproduction and a steep dip in prices."

More immediately, though, a collapse in the price of oil is bad news for companies working in clean tech—especially

**There's one major loser from inexpensive oil, especially if it's managed poorly, and that's the environment**

transportation technologies. Start-ups like Massachusetts' A123 Systems, which provides lithium-ion batteries for electric cars, are already struggling to survive the weak economy and could be sunk if gas prices remain below \$3.50 a gal. The same goes for plug-in cars like the Chevy Volt and the Nissan Leaf, which have sold more slowly than automakers expected, even with large government subsidies and, until recently, high gas prices. Cheap oil could set the mainstreaming of electric cars back even further.

This wouldn't be the first time cheap oil undercut what seemed like an imminent green revolution. Alternative-energy investment boomed during the 1970s, when Middle East unrest helped lead to high oil prices and long gas lines. Then when the price of oil collapsed in the 1980s, the nascent alternative-energy sector collapsed along with it. It took years for clean tech to recover from that downturn. With climate change already a dangerous reality—2012 is on track to be the hottest year on record—the world may not be able to withstand another missed chance to break away from oil. ■



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# Rana Foroohar



## Digging Out of the Debt Hole

Americans have fixed their own balance sheets. Can they now fix the economy?

**E**CONOMIC DOWNTURNS THAT FOLLOW a financial crisis tend to be very, very painful. That's because the bursting of a large debt bubble is followed by a long period of hunkering down, when everyone tries to repair their personal balance sheets. That means no spending and thus no growth. Historically, this process can take 10 years or more—hence the term *lost decade*.

Is that the situation in the U.S. today? You might think so, judging from the dismal growth and employment data coming out every month. But a chart released in June by McKinsey makes me think the picture could be somewhat brighter, and if that's the case, the credit will go to American consumers—not so much because they're spending but because they've been saving.

According to McKinsey's global deleveraging scorecard, American consumers have taken the lead among rich countries in getting their finances back in order since 2008. Until then, Americans had steadily increased their debt loads for about six decades. By the time the financial crisis hit, we had reached household-debt burdens not seen in decades—about 129% of disposable household income.

**Since then, we've done some major** belt tightening. Our debt load is down 11% from its peak (compared with 4% in Spain and 6% in the U.K.). At this rate, we're on track to hit a historic trend level of household debt, a more sustainable 103%, by 2013—only five years after the financial crisis.

What's more, the housing market is picking up, and housing is a crucial part of the debt-and-consumption equation. As the most recent World Economic Outlook report from the International Monetary Fund laid out, housing bubbles result in

much larger than normal contractions in economic activity, because so much of middle-class wealth—and so much personal debt—is tied up in housing. You don't even have to sell your house at a loss for this to have an effect on spending. The IMF report notes that homeowners with negative equity in their homes, even those who are still paying their mortgages, spend 30% less on home maintenance and improvements. And that belt



tightening goes directly to the bottom line of any number of American corporations, from Lowe's to Pottery Barn to Walmart. Indeed, research shows that the majority of job losses in the U.S. since the Great Recession were due to lower consumer spending because of household debt, a decline that resulted in layoffs at U.S. firms. Paring back debt is the precursor to greater spending and greater growth.

Given that consumer debt is down and U.S. home prices are beginning to swing up, what does that mean for the economy? Will America prove itself truly exceptional and escape the double-dip recession that threatens Europe and the slowdown affect-

ing the emerging markets? Optimists would say yes and point to Sweden and Finland, which went through similar banking crises and major economic contractions in the 1990s but recovered quickly and went on to years of strong growth as households repaired their balance sheets. "In those countries, household debt to income fell 30% from its peak. The U.S. has been tracking that trend line and is even doing a little bit better," notes McKinsey Global Institute director of research Susan Lund.

**The Scandinavian growth boom was** also helped by a weak currency, which the U.S. enjoys now. That in turn encouraged an export boom: from 1994 to 1998, Swedish and Finnish exports grew by double digits. Which is, it's worth noting, a goal that President Obama has set for America. The idea is that export growth will fuel manufacturing, which will bolster the middle-income jobs that we also need to get America spending again. It's a wage-led growth strategy that used to be popular in the U.S. Henry Ford famously paid his workers up to \$5 a day, much more than the national average, saying he couldn't sell his cars if they couldn't afford to buy them.

Will it work for America today? That depends on several internal and external factors. First, there's the disaster that is Europe. The U.S. could survive the trade dip that might ensue if the euro zone blows up (assuming there isn't a major transatlantic banking meltdown) as long as the rest of the world keeps growing at a decent rate. But at home, we need policies that encourage private and public investment, particularly in manufacturing and infrastructure—repairing the roads, bridges and ports by which our goods are shipped. That's yet another factor that helped Sweden rebound: as citizens reined in debt, companies and the government ramped up their spending on growth projects. Note to Washington and corporate America: consumers have done their part. It's time to do yours.



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# Joe Klein



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## And Now, How to Improve Obamacare

Obama could help himself if he leveled with voters about the law's weaknesses

**I**T WAS AN ELEGANT BIT OF BUSINESS. Chief Justice John Roberts managed to sustain the Affordable Care Act while eviscerating the political flummery on both sides of the question. In the process, he moved the national health care conversation a quantum leap toward candor—and pointed the way toward a constructive future debate. The act was, of course, constitutional. It had to be, or else Medicare wasn't. You can't allow government to tax people to pay for medical care for citizens over the age of 65 and not allow government to do the same for those under 65. At the same time, and despite the best efforts of the Obama Administration to camouflage the reality of the situation, the act demanded that people pay money to be part of the system. You can call that a mandate, a fee, a penalty or an aardvark. You can also call it a tax, if it's something you have to pay. Roberts chose to call it a tax because it was the clearest path—a superhighway, in fact—to constitutionality.

This was a huge victory for the President, but it should be a chastening one. Barack Obama and his handlers have shown a distressing tendency to not speak plainly to the American people on this crucial issue. Political courage requires clarity. The Obama Administration chose the tortured route of arguing the legality of the individual mandate via the interstate commerce clause for one simple reason: it did not want to take the political risk of allowing opponents to call it a tax increase. That was stupid. The Republicans were calling it a tax increase anyway.

There is still an odor of obfuscation around Obamacare. But there is a chance for the President to clear the air a bit, in the same way that Roberts did. He can find ways to make it more palatable to conservatives. He can move it closer to the vision of the original Heritage Foun-

dation individual mandate plan. If he's smart, the President will quickly give a speech acknowledging the contentiousness of the past three years and the validity of some Republican arguments against his plan. To that end, he could propose four amendments:

**Enact medical-malpractice reform.** Indeed, the President already conceded this point to the Republicans, but they've been loath to accept it. An incalculable, perhaps huge, cause of wasteful medical



spending is the extra tests and procedures that doctors perform to protect themselves from lawsuits. It should still be possible to sue a doctor who has been grossly negligent, but the standards for such suits should be tightened mightily.

**Make it a real market.** Only dedicated policy wonks know what the health care exchanges—the central market mechanism in the act—actually do. Perhaps we should rename them health care supermarkets. Their purpose is to lower premiums by giving individuals and small

employers the same market clout that General Motors and Time Warner have. For these supermarkets to actually work, though, they need to offer a range of competitive products. Obamacare left it to the states to build their own markets. That's not such a good idea. According to the Kaiser Family Foundation, people in more than 30 states are subject to near monopolies dominated by a single insurer. We should scrap the state exchanges and make it one big national Walmart of health. Republicans should love this. It's all about more competitive markets.

**Follow Roberts on Medicaid.** One of the worst aspects of Obamacare was that it moved 30 million people into Medicaid, a very troubled program. The states rebelled against this mandate, and Roberts ruled they could opt out. Obama should give states the option to move their Medicaid recipients into the health care supermarket system. This may cost money, but the President could twin it with another necessary reform: taxing the health care benefits provided to workers by employers (on a sliding, progressive scale).

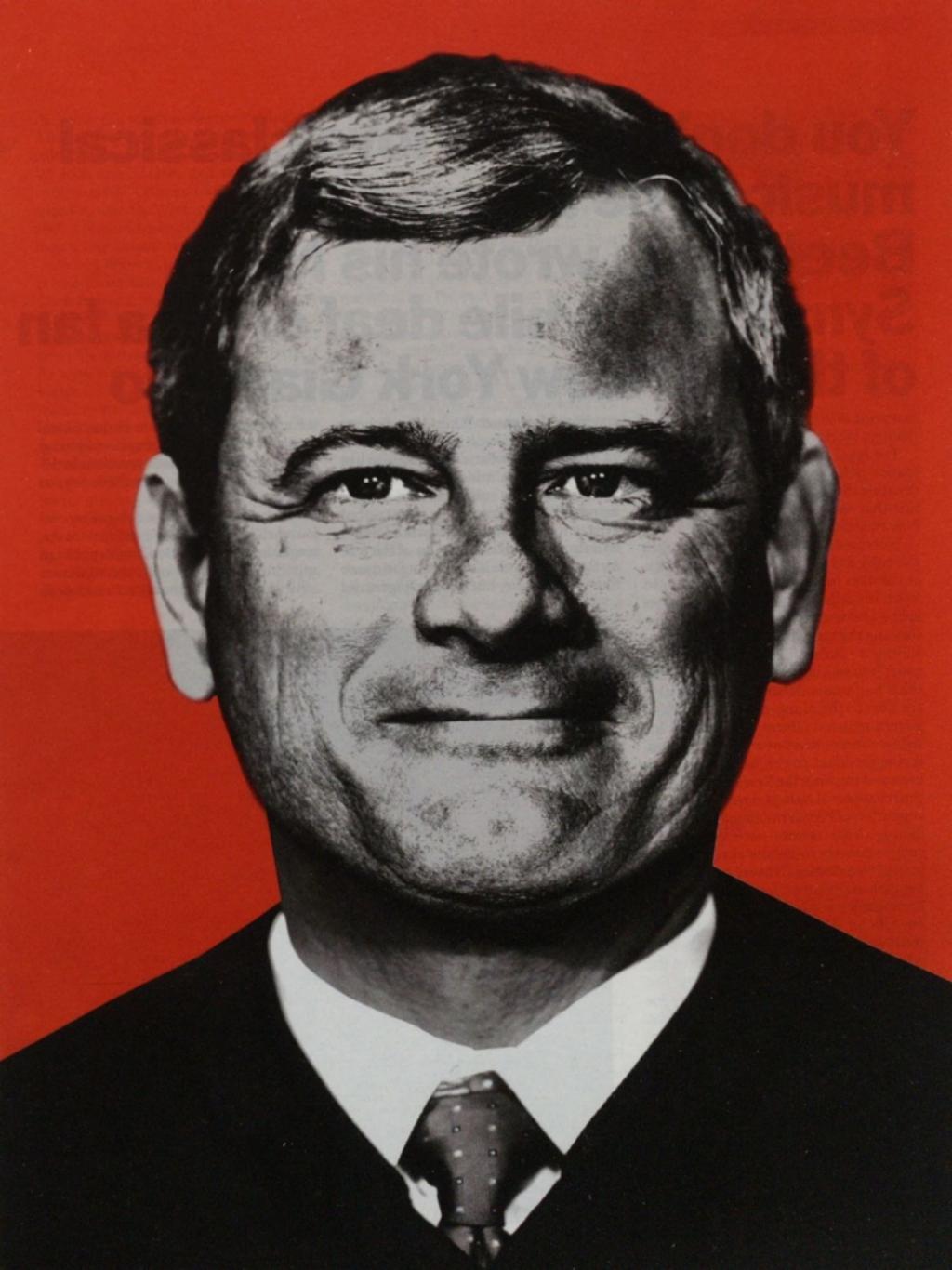
**Pay doctors salaries.** The current fee-for-service system encourages waste. It rewards doctors for each test and procedure they order. This is the single biggest cost driver in the system. You can't just abolish fee-for-service medicine, though. That would be, er, unconstitutional. But the President can double down on the existing pilot programs in Obamacare that encourage doctors to move into salaried systems.

The Republicans would, no doubt, screech and holler and oppose all the above. They always do. But it would put the President on firmer policy and political ground. A final word of warning to the GOP: Think twice about bringing up Obamacare for repeal in the House on July 11. It's a gimmick, a waste of time. As we learned in the recent Wisconsin recall election, the public hates gimmicks. A word to Mitt Romney as well: Be happy, dude! Roberts proved that your Massachusetts health care plan is constitutional too.

**Here's what we  
know for sure:  
Obama's health  
care reform is  
constitutional.  
Congress may  
not hold states  
hostage to its  
every whim.**

**And Chief Justice  
John Roberts  
is now in charge**

By David Von Drehle



# You don't have to love classical music to be amazed that Beethoven wrote his Ninth Symphony while deaf or be a fan of the old New York Giants to

marvel at Willie Mays' catch in Game 1 of the 1954 World Series.

For legal buffs, the virtuoso performance of Chief Justice John Roberts in deciding the biggest case of his career was just that sort of jaw dropper, no matter how they might feel about Obamacare.

Not since King Solomon offered to split the baby has a judge engineered a slicker solution to a bitterly divisive dispute. With his fellow Supreme Court Justices split 4-4 between two extreme outcomes—blessing the sprawling health care law or killing it—Roberts maneuvered half the court into signing half his ruling and the other half into endorsing the rest. He gave the liberals their long-cherished dream of government-led reform while giving his fellow conservatives new doctrine to limit congressional power, which they have been seeking since the New Deal. With the court's approval ratings at record lows and supporters of President Obama grimly predicting a legal travesty—or even a judicial coup—Roberts somehow cloaked a win for right-leaning legal theory in the glittering garb of a triumph for the left. And the Democratic swords that were being sharpened for an election-year war against the court were hammered into trumpets with which to herald the statesmanship of the Republican Chief Justice. "Whatever the politics, today's decision was a victory for people all over this country," the President declared after the ruling. Sharp-eyed conservative commentators—George Will and Charles Krauthammer, for example—read the fine print and agreed, though for very different reasons.

Of course, some on the right refused to see a silver lining in this defeat snatched from the jaws of victory. "The particular tragedy is that four Justices would have overturned... all of Obamacare as unconstitutional," the *Wall Street Journal* edito-

rial board lamented. "Only John Roberts prevented it."

The fact that Roberts had to squirm like Houdini to reach middle ground (in the second part of his ruling, he held that the mandate to buy insurance is not a tax, but by the third section he announced that it is) only enhanced the bravura of the feat. As the saying goes, it's one thing to dance like Fred Astaire, but Ginger Rogers did

it backwards in high heels. Philosophical purity is easy—the blogosphere is lousy with it—while pragmatic solutions to difficult problems are as rare these days as virgins on *Jersey Shore*.

As such, the Chief Justice's ruling confounded a political world primed for Armageddon: the spectacle of five Republican appointees striking down the signature achievement of a Democratic President in

## TOO BIG TO FAIL?

At 2,400 pages, *the Affordable Care Act defied comprehension. The Supreme Court ruling on the bill totaled a mere 193 by comparison*



the midst of a tough re-election campaign. After a party-line vote by the court to decide the disputed 2000 election for George W. Bush over Al Gore, and another in the controversial *Citizens United* campaign-spending case, the Washington atmosphere reeked of gasoline, and the Obamacare case looked like a match ready to fall.

When Roberts, a handsome guy of 57 raised in upstate New York and small-town Indiana, took his seat at the center of the bench on June 28, the final day of the court's term, and began reading aloud from his opinion, he sounded at first as if he were striking the match. The conservative critique of the so-called individual mandate was correct, he intoned: Congress lacks the power to require citizens to buy insurance they don't want. The other four Republican appointees agreed. Since the court ruled in 1942 that under the commerce clause, Congress could prohibit a farmer from growing wheat for his personal use, conservatives have been trying to rein in this ill-defined power, and here was Roberts drawing the line. Bulletins flashed at Fox News and CNN, and Klax-

ons rang battle stations all over the nation's capital.

But then, as Justice Antonin Scalia, the redoubtable hero of the right, looked on sullenly, Roberts rescued the law by saying the mandate is actually a tax levied by Congress on a citizen's decision to forgo insurance—and thus passes constitutional muster. Now the Democratic appointees sided with the Chief Justice, and whipsawed Washington was left dizzy. The case had not been decided, as most court watchers expected, by the unpredictable Anthony Kennedy, the Justice who normally casts the swing vote in close cases. The rest of the session passed in a blur, and with a nod of his head to solicitor general Donald Verrilli Jr., whose weak performance at oral argument had left Obamacare supporters in despair, Roberts headed toward summer vacation. In his wake he trailed mystery: why had he seized the steering wheel? Had he gone squishy—another in the long line of Republican disappointments on the court, stretching from Harry Blackmun to David Souter? Was it that endangered creature, a sober compromise designed to give something to everybody? Or was this a clever ruse to buy political cover for the court conservatives to ramrod their agenda in future terms?

John Q. Barrett, a law professor at St. John's University and biographer of the late Justice Robert Jackson, a favorite Roberts role model, dismissed the conspiracy theories. The ruling was a classic example of a cautious Chief Justice at work, he said. "I think that chiefs feel, for the public credibility and independence of the court, that major legislation should not be struck down on a 5-to-4 vote on grounds that Congress lacks the power. It hasn't happened in the modern era—since the 1930s. John Roberts will likely be Chief Justice for many, many more years, and it's not surprising to me that he wasn't looking to define his court stewardship with a radical decision. The opposite ruling would have been a deeply, permanently controversial landmark."

But cautious does not equal bland. By setting a limit on congressional power to regulate the nation's commerce—and by ruling that Congress cannot use its spending power to force states to greatly expand Medicaid coverage—Roberts blazed legal trails that conservatives have long dreamed of. How far down those paths the court will go in future terms is anyone's guess, but the liberal Justice Ruth Bader Ginsburg was sufficiently worried about these precedents that she wrote a lengthy dissent even though she had gotten the

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THE RIGHT STUFF  
Roberts in the  
1976 Harvard  
College yearbook



## JOHN ROBERTS IN BRIEF

### EDUCATION

1976 B.A. in history, Harvard College, *summa cum laude*  
1979 J.D., Harvard Law School, *magna cum laude*, managing editor of the *Harvard Law Review*

### LEGAL EXPERIENCE

1979–80 Clerk for Henry Friendly of the federal appeals court in New York

1980 Clerk for Associate Justice William H. Rehnquist of the Supreme Court

1981–82 Special assistant to the Attorney General, U.S. Department of Justice (Reagan Administration)

1982–83 Associate counsel to President Ronald Reagan, White House Counsel's Office

1986–88 Practiced corporate law at the prominent law firm Hogan & Hartson in Washington

1989–91 Principal deputy solicitor general, U.S. Department of Justice (George H.W. Bush Administration)

1993–2001 Practiced corporate law at Hogan & Hartson

Argued 39 cases before the Supreme Court throughout his career

### JUDICIAL EXPERIENCE

2003–05 United States Court of Appeals for the District of Columbia Circuit (appointed by George W. Bush)

### SUPREME COURT

2005 Nominated by Bush to serve as 17th Chief Justice of the United States; confirmed by a Senate vote of 78–22

### PERSONAL LIFE

Married Jane Sullivan in 1996; has two children, Josephine and John

—KAYLA WEBLEY

# May It Please the Court

## How each Justice framed the health care debate

By Adam Sorensen

† SONIA SOTOMAYOR

**'There is government compulsion in almost every economic decision because the government regulates so much.'**

Sotomayor's argument in March that Congress requires people to buy all sorts of things through the rules it passes

† CLARENCE THOMAS

**'The government's unprecedented claim in this suit that it may regulate not only economic activity but also inactivity that substantially affects interstate commerce is a case in point.'**

Thomas' conclusion that he can't overstate how much he thinks Congress overreached its authority by passing this law

† STEPHEN BREYER

**'Because we are human beings we all suffer from the risk of getting sick.'**

Breyer's reasoning during March oral arguments that all Americans should be considered part of 'the health care market,' because everybody needs care eventually

† ANTONIN SCALIA

**'To say that the individual mandate merely imposes a tax is not to interpret the statute but to rewrite it.'**

The conservative dissenters' central argument against Roberts' justification for upholding the law's requirement that Americans buy health insurance



† JOHN ROBERTS

# 'Put simply, Congress may tax and spend.'

The crux of Roberts' argument that the law's requirement for people to buy insurance or else pay a tax is constitutional

† SAMUEL ALITO

'The values that should have determined our course today are caution, minimalism and the understanding that the federal government is one of limited powers.'

The conservative dissenters' protest of the majority opinion

† ANTHONY KENNEDY

'If Congress can reach out and command even those furthest removed from an interstate market to participate in the market, then the commerce clause becomes a font of unlimited power.'

The conservative dissenters' argument that Congress should not be able to require people to buy anything

† ELENA KAGAN

'We don't get insurance so that we can stare at our insurance certificate. We get it so that we can go and access health care.'

Kagan's case, made in March oral arguments, that health care is different from other kinds of goods and services and that regulating it requires an unusual solution

† RUTH BADER GINSBURG

'When contemplated in its extreme, almost any power looks dangerous.'

Ginsburg's argument that conservative Justices' fears about the scope of the law were unfounded





## A TAX, BUT BY ANOTHER NAME

To many conservatives, John Roberts' decision to uphold Barack Obama's health care law was a betrayal of shared principles. But while Roberts split from the court's conservative bloc, he rejected the logic of its liberal wing as well, instead saving the President's signature legislation with an argument that Obama himself specifically disclaimed.

The core of the government's case was that the individual mandate, which requires virtually all Americans to buy insurance or else pay a fine, was permissible under the commerce clause. The court's four liberals agreed. Not Roberts. The framers of the Constitution gave Congress "the power to regulate commerce, not to compel it," he wrote, arguing that it would be a dramatic expansion of federal authority, a "license to regulate what people do not do." Nor did Roberts accept the government's claim that it could compel the purchase of health insurance under the necessary-and-proper clause.

And yet, as Roberts wrote, "that is not the end of the matter." Citing an 1895 California case about maritime insurance, Roberts noted that when weighing whether to strike down a law, Justices have the duty to consider every reasonable way "to save a statute from unconstitutionality." Roberts' "saving construction" was that the mandate was in essence a tax and therefore protected by Congress's taxing power in Article 1 of the Constitution. It was not, Roberts conceded, "the most natural interpretation." The White House had insisted the mandate was not a tax but a penalty.

Even so, Roberts argued, the mandate has all the hallmarks of a tax by another name: it imposes a modest financial obligation, is not designed to be punitive and is collected by the IRS. "Because the Constitution permits such a tax," Roberts wrote, "it is not our role to forbid it, or to pass upon its wisdom or fairness." As Roberts saw it, the court's role was deference.

—ALEX ALTMAN

SEALED  
Roberts  
saved—for  
now—the  
centerpiece  
of Obama's  
presidency

end result she wanted: Obamacare was upheld. And her three liberal colleagues substantially agreed with her.

The four dissenters on the right, meanwhile, left no doubt that they were ready to plunge ahead toward greater limits on the power of the federal government. "The fragmentation of power produced by the structure of our government," they wrote, "is central to liberty, and when we destroy it, we place liberty at peril." Their rare jointly written opinion left some analysts wondering if Roberts had jumped ship from his conservative colleagues at the last minute; his "verbal wizardry," they seethed, went "deep into the forbidden land of the sophists." Their preference would have been to strike down the entire 2,400-page law, every word of it, and let slip the dogs of war.

### The Prognosis

SO IT'S BACK TO THE SALT MINES FOR THE legions of government workers and health care providers charged with implementing the ambitious reforms, which seek to beef up the Medicaid program for low-income Americans and open the private insurance market to all comers, regardless of health status, and thus cover tens of millions currently lacking insurance—all while cutting health care costs, at least in theory. To its supporters, the Affordable Care Act is an elaborately integrated work of engineering exquisite enough for Steve Jobs. Critics of the law would say Rube Goldberg. Either way, it is the most sweeping piece of domestic legislation in decades, and striking it down would have sown further chaos in the already unruly medical marketplace.

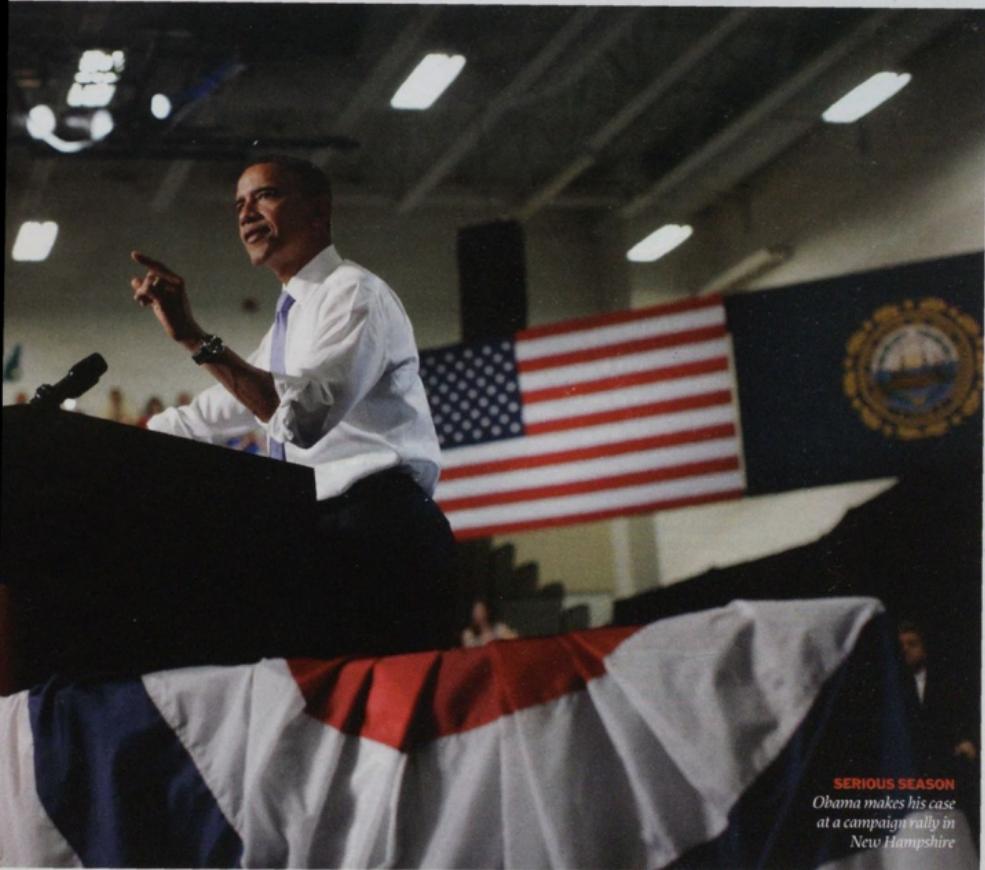
And back to work as well for the Democrats who have thus far failed to make Americans fall in love with their pet program. A recent memo from Gallup summarized the latest poll results on the eve of the Supreme Court's action and found that "although President Obama and his supporters predicted that Americans would become more positive about the law after it passed and they had time to better understand it, that has not been the case. Americans appear as negative or more negative now than they were" when the law was passed in 2010. An Associated Press/GfK survey in mid-June found that 47% of respondents opposed the law, compared with 33% who supported it, and even most Democrats believed the individual mandate was unconstitutional when Gallup asked the question in February.

Which is why Obama let the two-year anniversary of the law pass by in silence in March. When he did talk about health



care reform on the campaign trail, he tended to focus narrowly on such popular provisions as the requirement that private insurers allow young adults up to age 26 to remain on their parents' policies. Virtually no one is against that provision.

But after digesting the Roberts ruling, the President hit the reset button on his efforts to sell the program. In remarks from the East Room, with the stately central corridor of the White House exuding authority in the background, he promised that "insurance companies can no longer impose lifetime limits on the amount of care you receive. They can no



#### SERIOUS SEASON

Obama makes his case  
at a campaign rally in  
New Hampshire

longer discriminate against children with pre-existing conditions. They can no longer drop your coverage if you get sick. They can no longer jack up your premiums without reason." Americans who currently lack insurance will no longer be free riders on the health care system, while people who already have coverage can keep it, Obama said. (The Congressional Budget Office is not so sure about that last point. Its report in March cited a "tremendous amount of uncertainty" about the effect of the law on employer-based coverage and estimated that as many as 20 million fewer Americans will get in-

## After digesting the Roberts ruling, the President hit the reset button on his efforts to sell the program

surance through their employers by 2019.)

The court added a new layer to the uncertainty when it ruled, by a strong 7-2 margin, that the federal government cannot force states to adopt the Medicaid expansion that is central to the quest for universal coverage. Twenty-six states joined the successful challenge to a provision of the law that would have stripped existing Medicaid funds from states that don't get with the program—including Texas, home of the largest number of uninsured residents. How many of those states will now opt out, and how many millions will thus fall through the cracks, remains

# What the Affordable Care Act Means if You Are...

By Kate Pickert



## A YOUNG ADULT

If you are under 26, you may already be able to get health insurance through your parents' coverage. Beginning in 2014, when most Americans will be required to have insurance or pay a tax penalty, you'll have to buy coverage independently if you don't have it through your parents, a job or a government program. You may find that prices are more expensive than today's, since beginning that year, insurers won't be able to set premiums based on risk anymore. (Currently, if you're young and healthy, you are low risk and therefore enjoy some of the lowest rates.) While most Americans will need comprehensive health insurance to fulfill the individual mandate, if you are an adult under 30 you will be able to meet the requirement with cheaper insurance that covers less.



## A LOW- TO MIDDLE-INCOME EARNER

Beginning in 2014, you may qualify for Medicaid if you earn less than 133% of the federal poverty level: \$14,856 in 2012. (Medicaid is a program funded and run jointly by the states and the federal government, and part of the Supreme Court ruling said states can decide whether to adopt this new federal eligibility level.) If you earn more than 133% of the poverty level but less than 400% (\$44,680 in 2012) and don't have affordable job-based insurance, you may be eligible for federal subsidies to help you purchase insurance independently beginning in 2014.



## A SMALL-BUSINESS OWNER

If your company has 25 or fewer employees, you may already be eligible for federal tax credits to help you buy health insurance for your workers. If you employ 50 or more workers and don't provide them with insurance—or they can't afford the insurance you offer—you could be fined starting in 2014. Depending on the size of your business and the state in which it is located, you may be able to purchase a less expensive small-group policy through a highly regulated health insurance exchange.



## AN EMPLOYEE AT A LARGE COMPANY

Not much is likely to change for you right away. Employers with more than 200 workers will be required, beginning in 2014, to enroll them in health insurance plans. You can opt out if you don't want what's offered, but then you will need to purchase insurance on your own. If you enroll in coverage at work, you won't have much choice in insurance plans, as your employer will choose coverage options for you. New federal regulations will require that insurance to meet minimum standards.



## How the Law Unfolds

### NOW

► Public insurance plans have been set up in the states to cover some people with pre-existing conditions.

► Insurers are required to cover some adult children up to age 26 on their parents' policies.

► Some health insurance plans provide 100% coverage for preventive services.

► Seniors with Medicare prescription-drug coverage who hit a coverage gap known as the doughnut hole—in which seniors must cover all of their drug expenses once their total costs hit \$2,930 and until they spend \$4,700 out of pocket—have received \$250 federal rebates and deep discounts on brand-name drugs.

### BY 2014

► Insurance companies will be required to price and sell policies to everyone, regardless of health status.

► Millions will receive federal subsidies to help them afford insurance that's purchased independently. Subsidies will be available to people earning 133% to 400% of the federal poverty level (\$14,856 to \$44,680 in 2012).

► States will have the option of expanding their Medicaid programs to include all individuals earning less than 133% of the federal poverty level.

# Rules of the Mandate

Will you be penalized for not having insurance?



## AN ELDERLY PERSON

If you are enrolled in Medicare, you can already receive preventive care, like annual checkups, at no out-of-pocket cost. If you have prescription-drug coverage through Medicare and hit what's known as the doughnut hole—in which you must cover all of your drug expenses once total costs reach \$2,930 and until you spend \$4,700 out of pocket—you may have already received deep discounts on brand-name drugs and a \$250 rebate from the federal government. Over time, the doughnut hole will disappear.

If you have a Medicare Advantage plan, a private insurance policy under the auspices of Medicare, any extra benefits you receive beyond traditional Medicare coverage may eventually be cut.



## SOMEONE WITH A PRE-EXISTING CONDITION

You may already be eligible to enroll in a new "high-risk" pool for uninsured people in your state with pre-existing conditions. Beginning in 2014, insurance companies will not be able to turn you away based on your health status or set prices higher if you have a pre-existing health condition. In 2014, if you buy insurance independently, you will be able to start shopping for coverage that is vetted by the federal government or the state.

### ARE YOU ...

- A member of a religion that opposes health insurance?
- An undocumented immigrant?
- In jail?
- A member of an Indian tribe?
- Earning so little that you are not required to file an income tax return?
- Unable to find insurance that costs less than 8% of your income?

YES

No penalty for being without health insurance

Do you already have insurance through a government program like Medicare or Medicaid or through your employer?

YES

You're good. No individual-mandate penalty is assessed

NO

You must purchase health insurance independently or pay a penalty

### ► PENALTIES

Annual penalties—shown here per individual—will be very small in 2014 but will increase over time

\$95  
2014

\$325  
2015  
2016+

\$695

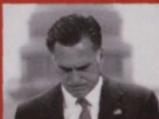
► Individuals earning more than \$200,000 per year (\$250,000 for couples) will face higher taxes.

► Nearly all Americans will be required to have health insurance, with some notable exemptions, including for people whose only coverage options (after federal subsidies and employer contributions) exceed 8% of their income.

► Companies that employ 50 or more workers and don't provide insurance benefits—or that offer coverage their employees can't afford—may be fined.

### ► ENFORCEMENT

The Internal Revenue Service will collect individual-mandate penalties. You will either owe more or receive a smaller refund when you file your annual income tax returns. However, if you refuse to pay the penalty to the IRS, the Affordable Care Act prohibits the agency from jailing you or seizing your property.



**A SILVER LINING**  
Romney hopes the ruling will energize Republicans

## LOST THIS ROUND

Confronted with a clear victory for President Obama, Mitt Romney responded with a rallying cry. "What the court did not do on its last day in session, I will do on my first day if elected President of the United States," he declared. "And that is, I will act to repeal Obamacare."

Romney's advisers insist that the decision will aid their man's cause. Shared outrage over John Roberts' creative jurisprudence offers Romney a chance to bond with conservatives who never fully trusted him, they say, which will boost Republican turnout this fall. "Our base will go nuts," says a Romney adviser. "This is going to be good for us."

But that spin amounts to sugar-coating. Romney had openly rooted for the law's failure, even predicting that the court would strike it down, making the ruling seem like a kind of rebuke to him instead of the President. More important, by applying a stamp of legitimacy to the law, the Supreme Court has deprived the presumptive GOP nominee of the argument that Obama squandered time on an illegal power grab when he should have been performing CPR on the economy.

Nor is it clear that voters will accept Romney's invitation to revisit what is now essentially settled law. It's true that swing voters have no love for Obamacare: a June Ipsos poll showed that a whopping 73% of independent voters opposed the law. But many of those same voters are tired of division and bickering, and pressing the fight could be risky.

More likely, Romney's best response will be to seize on the majority's argument that the mandate amounts to a tax and argue that Obama has imposed a new tax burden on voters (though few Americans are likely to pay a tax penalty). Because Obama has long denied that the mandate was a tax, Romney could claim the President broke his promise not to raise taxes on middle-class Americans and hope voters see it that way too.

—MICHAEL CROWLEY

to be seen. Some experts worry, though, that fewer people covered by Medicaid will mean more people requiring federally subsidized coverage through new private insurance exchanges. That could substantially increase the sticker price of reforms. Roberts' ruling on the Medicaid provisions of the Affordable Care Act will open the door to new state challenges of other Washington our-way-or-the-highway mandates—and soon. It is both an example of Roberts' balancing act and another win for the antifederalists.

### The Political Impact

IF OBAMACARE HAS PROVED TO BE A HARD sell for the President, it is better than having nothing to sell at all. Roberts not only shielded his branch of government from charges of rank partisanship with his ruling but also granted partial immunity to Obama from the indictment that he spent the first year of his presidency fiddling over an unconstitutional overreach while the economy was burning.

Obama aides say he never doubted the outcome. After all, his long journey toward health care reform—the Democratic grail since Harry Truman was rocking double-breasted suits—has been nothing but cliffhangers and happy endings, from his perspective. After all the speechmaking, deal cutting, vote rustling and budgetary legerdemain that went into eking the bill through the Senate, he couldn't believe it would die in the hushed and secret chambers of the high court. That the individual mandate might prove fatal was too rich

an irony. After all, the idea was originally hatched at the conservative Heritage Foundation and embraced by Republican Mitt Romney before he spurned it. Campaigning against Hillary Rodham Clinton for the party's nomination in 2007 and 2008, Obama insisted that an insurance mandate wasn't necessary, but as President he went along with the idea as a way of securing a few desperately needed votes in his own party. For obvious political reasons, he shied away from calling the mandate a tax.

THE POLITICAL IMPACT OF THE DECISION IS likely to ripple through the election season in ways that jostle every boat, including the President's, and Obama acknowledged the rough seas ahead. "I didn't do this because it was good politics," Obama said of the newly validated law. Republicans rushed to try to prove his point. "Winners celebrate," said veteran Washington watcher William Galston in the aftermath. "Losers mobilize."

Immediately, GOP leaders latched onto the court's finding that the individual mandate was a tax and claimed that Obama had deceived the public when he insisted that his massive reform plan would not raise taxes. "Obama lied to the American people. Again," Sarah Palin tweeted briskly. "He said it wasn't a tax."

Romney wasted little time in reacting. Standing atop a Washington office building with the Capitol dome looming over his shoulder, he promised to repeal the health care law if elected President. "Our mission is clear," he said. "If we want to get



WILL CONGRESS REPEAL? Romney chose a Capitol backdrop for his response to the ruling

rid of Obamacare, we're going to have to replace President Obama." That's a theme that has worked well for Republicans in congressional races, going back to Scott Brown's surprise win in the 2010 race to fill the Massachusetts seat of the late Senator Edward Kennedy. Polls show little appetite for repeal among independent voters, but for the Republican base, the Roberts ruling was cause for downing a quart of Red Bull.

Surprisingly, when Romney came down from the rooftop and returned to fundraising, he found that the Chief Justice had unlocked a lot of checkbooks. The Republican campaign said it raised more than \$4 million in the first 24 hours after Roberts announced his decision. As Steven Law, president of the GOP super PAC American Crossroads, confidently predicted, "this decision will drive Republican voter intensity sky-high." One day after the Roberts ruling, the super PAC's political affiliate Crossroads GPS updated an ad it was running against North Dakota Democrat Heidi Heitkamp, a candidate for the U.S. Senate, to claim that she had, in backing health care reform, raised "half a trillion dollars in taxes on Americans." That language is sure to be coming soon to a TV near you.

Representative Eric Cantor of Virginia, majority leader of the Republican-controlled House of Representatives, said his caucus would pass another resolution calling for repeal when Congress convenes after the Fourth of July. The measure will go nowhere in the Senate, but even so, it would be a mistake for the GOP to count on a backlash as the race goes forward. The next federal unemployment report is due on July 6, and that's likely to return the focus of the election to the issue uppermost in the minds of voters. Jobs, not health care, will be the key to the White House this year, which is why Romney's advisers stop short of saying Obamacare will remain at center stage. "In the end, this is a good thing for us," says a person close to Romney's campaign of the Supreme Court's action, who adds that the issue "will fade" over time. Thanks to Roberts, the issue of naysaying, road-blocking, Party of No Republicans—a theme near and dear to the Obama campaign—may fade a little bit too.

## The Roberts Era

IT'S HARD TO BELIEVE, BUT GENERATIONS of Americans considered compromise an admirable quality. Schoolteachers taught their students about the Great Compromise that produced the Constitution and the Missouri Compromise that—for a time—held it together. Now the word

connotes something bad. A leaky gasket has been "compromised," and cheating spouses are caught in "compromising" positions. What Roberts managed to do with Obamacare vindicated the virtue of compromise in an era of Occupiers, Tea Partyers and litmus-testing special interests.

He didn't seek some nonexistent middle ground halfway between irreconcilable poles. He didn't listen to one side saying no and the other saying yes and write an opinion saying maybe, or blend black and white to make gray. He found a means of giving both sides just enough of what they wanted that he was able to avert a crisis. In the superheated conflict mill that is American politics these days, it's good to have someone in a position of authority willing to try.

What's more, Roberts found a way through that did not betray his own firmly held beliefs. He was conservative more than 30 years ago, when he clerked for the future Chief Justice William Rehnquist, and conservative when he served as a counsel in the Reagan White House. He was conservative when his name appeared in a leadership directory of the Federalist Society, and he is still conservative today. His cautious solution to the health care standoff, however, will make it much harder for his foes to paint his future decisions as the work of a lawless ideologue—no matter how conservative they are. He has managed to stand well above the viral, toxic cloud of partisan rancor that has settled over the capital, making him perhaps the healthiest figure, politically speaking, in government. After seven terms as Chief Justice, he finally put the *Roberts* in the Roberts court.

And ultimately, even though his compromise left the enormous mechanism of health care reform lumbering onward to horrify his friends on the right, Roberts brought the court down squarely on the side of one of the most basic conservative principles of all: that big decisions in the U.S. should be made not by judges or bureaucrats but by voters. They'll have their say in November. "The Framers created a Federal Government of limited powers, and assigned to this Court the duty of enforcing those limits. The Court does so today," he wrote at the end of his 59-page decision. "But the Court does not express any opinion on the wisdom of the Affordable Care Act. Under the Constitution, that judgment is reserved to the people..."

"It is so ordered." —WITH REPORTING

BY ALEX ALTMAN, MICHAEL CROWLEY, MICHAEL GRUNWALD AND MICHAEL SCHERER/WASHINGTON

ONE-VOTE MARGIN  
Obama must now focus on the economy



## HOPE REBOUNDS

Barack Obama at first watched his legacy crumble on live television as he stood just outside the Oval Office, where a flat-screen TV broadcasts the feeds of four cable-news stations. "Supreme Ct. Kills Individual Mandate," the CNN screen read: Fox reported the same grim news. Two years of work, most of his political capital, the chance to insure millions more Americans—it was all slipping away. The President did not speak. He just gazed at the monitor, looking anxious and puzzled, one aide said.

Then White House counsel Kathryn Ruemmler bounded in, all smiles, her two thumbs raised in the air. One of her lawyers was at the court, with a live audio feed coming from the hearing room. The networks had it wrong. "The Affordable Care Act has been upheld by the court," she told the President. "There are five votes finding it was valid under the Congress's taxing power." He gave her a hug.

The victory gave Obama the chance to make the argument he most wanted to make: that it is time to move on. "What we won't do—what the country can't afford to do—is refight the political battles of two years ago or go back to the way things were," he said later in the East Room. "With today's announcement, it's time for us to move forward."

The ruling was a rare piece of good news for Obama after weeks marked by a slowing U.S. economy and troubles in Europe. The threat of GOP attacks on the failure of Obama's biggest initiative came undone; his base suddenly had a new reason to get excited for the election. At the annual congressional baseball game on June 28, Democrats could be heard chanting "Jus-tice Rob-erts" in the stands.

But there were no plans to adjust the President's stump speech, which features only passing references to health care. The economy remains the issue that will make or break his re-election chances.

—MICHAEL SCHERER



# Deliverance or Disaster? Four former solicitors general weigh in on Roberts' ruling

**Theodore B. Olson**

**Solicitor general under George W. Bush  
from 2001 to 2004**

THE SUPREME COURT'S DECISION ABOUNDS with legal and political ironies. Foremost, and central to the result, is the majority's conclusion that the individual mandate is a legitimate exercise of Congress's power to tax. During the legislative debate, the President and his allies were adamant that the mandate was absolutely not a tax. Had they marketed this provision as a tax, the bill would surely not have passed. So the Supreme Court saved the signature legislative achievement of the Obama Administration precisely because it was not what the Administration said it was.

When the case got to court, the Administration invoked the federal Anti-Injunction Act, which bars suits to restrain the collection of any tax. The government argued that this law precluded the challenge to the mandate. So if the mandate was indeed a tax, this law would have made the case dead on arrival. But in examining this provision, the court held that the mandate was not, after all, a tax; it was just what Congress called it, a penalty. The choice of labels, the court said, cannot control as to whether the law is constitutional but does control as to whether the tax anti-injunction law applies. When I use a word, the court, like Humpty Dumpty, said, it means just what I choose it to mean, neither more nor less.

The magic of this dueling taxonomy of the word *mandate* meant that because it is a penalty, the court could go forward to consider its legality, but because it is a tax and not a penalty, it is a lawful exercise of Congress's taxing power, not an unlawful regulation of commerce as the dissenters asserted. As in *Marbury v. Madison* 200 years ago, in which the Supreme Court held that it had the power to decide whether laws were constitutional, this court exercised that power after dispensing with a provision that would have denied to the court the power to do so in the first place. If it was a tax, the court could not have upheld the tax. But because it was a penalty, it was lawful as a tax. Chief Justice John Roberts has learned a thing or two from his legendary predecessor Chief Justice John Marshall.

Yet another irony is that five Justices decided that Congress did not have the power under the commerce clause to regulate doing nothing—not buying health insurance. But five Justices (with only Roberts in both camps) held that Congress does have the power to impose a tax for doing the same nothing.

Our constitutional-law professor President, who insisted that Obamacare was constitutional, was right all along. But he was right because he was wrong. He was right that it was constitutional because he was wrong that it was not a tax. He either doesn't know his constitutional law that well or his politics counseled not sharing that wisdom with Congress voting on the measure.

The political irony is that the individual mandate is widely unpopular and will become more so when small businesses and individuals start to pay for it and when the tax man comes collecting the penalty (i.e., tax) from the uninsured. On the other hand, solving the health care crisis is something the public does want. If Obamacare had been struck down, the President's re-election campaign would have targeted the five evil Republicans on the Supreme Court, as he signaled with his outburst challenging the court shortly after his team faced rough sledding in the court's oral argument. His campaign was already fashioning a direct challenge to Mitt Romney and Republicans in Congress to come up with their solution to the health care crisis before the election. A virtually impossible and highly perilous political course.

That avenue is now foreclosed. So by winning his case in court, the President

now has to defend an unpopular law that he secured by misrepresenting what it was. And he cannot attack Republicans for not offering a solution because his solution is now the law. He got what he wished for.

So President Obama may have lost by winning and might have won had he lost. One gets a sense from the White House spin after the argument that there was a secret longing that the court would take the bait and do precisely what the President was, in a sense, daring it to do. Roberts did not bite.

Finally, the rejoicing by liberals may be short-lived. Their version of federal power was vindicated but only if they want to enact politically unpopular taxes. On the other hand, five Justices significantly reined in federal power to regulate commerce and, in another part of the court's opinion, to exercise power under the spending clause. These authorities are much easier politically to exercise in Congress; unfunded mandates are one of the preferred ways of taxing in sheep's clothing. The court's decision, while reaffirming authority that is hard to use, restricted authority that is easier to use. Like the President, liberals may have lost by winning.

decision that may prove most enduring are the limits it suggests on congressional power. Because the controlling opinion upholds the individual mandate under the taxing power, there was no need for it to address the commerce clause. But the Chief Justice, joined by the other four conservative members of the court, goes out of his way to reaffirm that the commerce clause has limits and to posit that Congress's power to regulate commerce does not include the power to require individuals to participate in commerce. Perhaps the most striking limitation on federal power in the decision—endorsed by seven members of the court—is its reinvigoration of constraints on Congress's spending power. Congress's ability to induce states to adopt policies by making them conditions for receipt of federal money. By rejecting Congress's authority to condition a major expansion of Medicaid on loss of funds from the pre-expansion program, the court for the first time has struck down a spending law as too coercive of the states. The commerce clause and spending clause/federalism limitations in the controlling opinion will

likely spur new challenges to federal programs designed to test the exact contours of those limitations.

## Neal Katyal

**Acting solicitor general under President Obama from 2010 to 2011**

BEFORE JOHN ROBERTS WAS CONFIRMED in 2005, Senator Arlen Specter predicted that the future Chief Justice's tenure "would present a very unique opportunity for a new Chief Justice to rebuild the image of the court away from what many believe it has become as super legislature and to bring consensus to the court with the hallmark of the court being 5-4 decisions." Well, this was a 5-4 decision, but it managed to change the image of the court and that of the Chief Justice.

The only precedent that comes to mind to describe the blockbuster health care decision is a Voting Rights Act case, *Northwest Austin v. Holder* (2009). In that case, following the court's repeated questioning of the law's constitutionality at my oral argument, pundits thought the act was going to be declared unconstitutional. And when the Chief

## Seth Waxman

**Solicitor general under Bill Clinton from 1997 to 2001**

DURING HIS CONFIRMATION HEARING, Chief Justice John Roberts promised to work for greater civility and consensus on the court and to look beyond politics in addressing legal issues. His opinion in the health care case makes good on those promises. By joining the court's liberal members to uphold the individual mandate, the Chief Justice makes plain that his concern was with law rather than a particular statute he perhaps thought unwise as a matter of policy. The opinion emphasizes repeatedly the importance of judicial restraint and respect for the policy judgments of the elected branches: "We do not consider whether the Act embodies sound policies. That judgment is entrusted to the nation's elected leaders. We ask only whether Congress has the power to enact the challenged provisions." That is certainly correct.

While those who support the Affordable Care Act will, of course, be pleased that its core provisions have been upheld, the aspects of the court's



# HELP SAVE THE 'WOW'

These giants of the animal kingdom need help. Despite their strength and cunning they're no match for a poacher's rifle. For 50 years WWF has been securing protected areas worldwide, but these aren't enough to stop the killing. To disrupt the sophisticated criminal gangs supplying animal parts to lucrative illegal markets, we are working with governments to toughen law enforcement. We're also working with consumers to reduce the demand for unlawful wildlife products. Help us look after the world where you live at [panda.org/50](http://panda.org/50)



**50 YEARS**  
OF CONSERVATION

Indian Tiger.

© National Geographic Stock / Michael Nichols / WWF

Justice handed down his decision in open court, he spent several painful minutes reading from the start of his opinion, which explained why the decision was an intrusion into federalism. This led all of us in the courtroom to think the act would be struck down. But then the Chief reversed course in the middle of his reading and said the act was constitutional. The way the Chief Justice arrived at his result, he explained, was by basically rewriting the Voting Rights Act's "bailout provision" to make it constitutional.

All those moves were present in the health care opinion. Skeptical questioning at oral argument. Pundit classes chattering. Many minutes on the bench during the announcement of the opinion in open court when the Chief attacked the law as unprecedented. But then, a reversal of course and a rewriting of the statute to save it from a constitutional infirmity. The result was to leave in place a statute that Congress never enacted, according to Justice Anthony Kennedy's dissenting opinion.

There are hard questions about whether the Chief Justice's approach in the Affordable Care Act and Voting Rights Act cases is more or less "activist" than simply striking the law down (as Justices Kennedy, Antonin Scalia, Clarence Thomas and Samuel Alito would have voted to do). After all, it is hard to imagine this new version of the law being repealed anytime soon, so the notion that the court has left the legislative process unencumbered is not accurate. But one thing is certain: this decision is a stark reminder that there is a difference between law and politics. Think about it: whether in Congress or the boardroom, on the campaign trail or at a dinner party, people's views of the act's constitutionality have been driven largely by politics. The court's decision is ultimately a victory for the principle of law.

In the wake of *Bush v. Gore*, Americans on both sides became far more comfortable thinking about "Republican" and "Democratic" Justices. But look at what happened in the health care decision: President George W. Bush's nominee as Chief Justice sided with the Clinton and Obama appointees. And two of those Clinton and Obama appointees—Stephen Breyer and Elena Kagan—in turn sided with the five Republican appointees on the Medicaid question. If this doesn't demonstrate that the Constitution, and Supreme Court decision-

making, isn't just politics by another name, I'm not sure what could.

As a law professor, the first thing I teach my students is to think like a lawyer. And the first thing that means is to ask the students to reverse in their heads the parties in a case and pretend that each argument was being voiced by the opposite party. Doing so is a helpful way to minimize one's biases and to develop a lawyer's skill set. It has often been said that when he was in practice, Chief Justice Roberts was one of the greatest lawyers in American history. Today's decision proves that he has lost none of that touch since ascending to the bench.

## Ken Starr

**Solicitor general under George H.W. Bush from 1989 to 1993**

FROM THE FOUNDING OF THE AMERICAN Republic, the nation has been continually divided over a basic issue: What powers are vested in the federal government and what are the limitations on the central government's reach? This has been the yin and yang of American constitutionalism.

The pundits will wax endlessly on the political nature of the nation's highest court and how the Chief Justice must have swallowed hard to save a statute that pushed federal power to previously uncharted territory. Requiring citizens to do business with a private company is extraordinary and likely was a result that the Chief Justice found less than intuitively or viscerally congenial.

What saved the mandate was the Chief Justice's commitment to the court as an institution that should exercise restraint in the course of reviewing congressional assertions of power. This is part of the high court's canon. That is the enduring legacy of John Marshall, whom the incumbent chief has openly praised in lavish fashion.

The Chief Justice's usual comrades were vigorous in dissent and must have found their leader's theoretical approach baffling, even mystifying. But that is inside baseball and ultimately doesn't count. What matters, now that the dust has settled, is that John Glover Roberts Jr. is in command and that the debate over the wisdom of President Obama's legislative centerpiece returns to the legislative arena. That will be satisfying indeed to the Hoosier who sits in the center seat once occupied by his judicial hero, Marshall.

**'This decision is a stark reminder that there is a difference between law and politics. Think about it: whether in Congress or at a dinner party, people's views of the act's constitutionality have been driven by politics.'**

—NEAL KATYAL

# A Healthy Business Model

*Diversified chemicals manufacturer Asahi Kasei is turning health care into a major core business through alliances and acquisitions*

**I**N TIMES OF economic uncertainty, a well-balanced portfolio can be a lifesaver. Just ask Asahi Kasei, a company with four distinct business interests: chemicals and fibers, homes and construction materials, electronics, and health care. Thanks to its diversity, Asahi Kasei overcame challenges in Europe and China and increased revenues to \$19.16 billion (¥1.6 trillion) in the fiscal year ended March 31, 2012. The company's operating income from its homes and health care divisions actually increased by more than 25%, cushioning declines in the more volatile electronics

and chemicals areas.

In the quest for stable, long-term growth, Asahi Kasei's president, Taketsugu Fujiwara, follows a two-pronged strategy: "We want to reinforce our position in areas where we're already a world leader, like S-SBR synthetic rubber and acrylonitrile. At the same time, we are looking to high-growth businesses that offer new value for society."

Health care, which accounted for just 8% of group turnover last year, is one such promising area. Fujiwara expects revenues in this field to more than quadruple by fiscal 2020, from \$1.46 billion (¥120 billion) in

Taketsugu  
Fujiwara  
President  
Asahi Kasei



2011 to \$6.09 billion (¥500 billion). The goal is for health care to become a third pillar of Asahi Kasei's business, alongside chemicals and housing, powerhouse segments that last year accounted for more than 70% of the company's revenue.

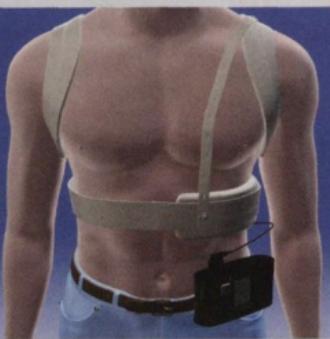
Pharmaceuticals and medical devices are already strong performers: Teribone, an injectable drug for osteoporosis released last November, should ring up sales of \$171.68 million (¥14 billion) in Japan this year alone. Asahi Kasei is also the world's No. 2 producer of artificial kidneys.

## Growth Through Acquisition

Recognizing that organic growth of existing businesses would not enable the company to hit its target,

Fujiwara took a new course. "We needed to add a new health care field through acquisition," he says. Looking for a medical device maker in a clearly defined field with good growth potential, he narrowed his search to the United States. "The U.S. has the world's most advanced medical sector, including numerous device makers, and its FDA certification system is highly regarded worldwide," he says.

Fujiwara's search culminated in April with the \$2.2 billion acquisition of Massachusetts-based Zoll Medical Corp., the U.S. market leader in defibrillators used by medical professionals to revive people after cardiac arrest. "It's a young, energetic, highly specialized company with great growth potential," Fujiwara notes,



Sales of LifeVest, a wearable defibrillator, are growing rapidly

A Zoll automated external defibrillator (AED)

adding that Zoll's top-class management team and shared values were also major factors driving the deal.

Asahi Kasei and Zoll are currently working on a plan to develop synergies to accelerate Zoll's already rapid rate of growth. The two firms have complementary strengths, with Asahi Kasei bringing marketing muscle and deep expertise in Asian markets to Zoll's strong brand and product portfolio.

With the Zoll acquisition, Fujiwara's goal is to build critical care into one of Asahi Kasei's leading global businesses. The company has already started marketing Zoll's automated external defibrillators (AEDs)—which can be used by ordinary bystanders—in Japan. The LifeVest, a wearable defibrillator used by patients who are at high risk of sudden cardiac arrest, is another exciting product. Currently responsible for 20% of Zoll's sales, its sales are growing by 70% to 80% per year. "By 2016, LifeVest could account for half of Zoll's sales," says Fujiwara.

### **Brand-New Science**

Asahi Kasei has identified two other health-related areas that promise rapid growth: cell culturing and home therapy. To obtain a position in the former, it formed an alliance with Tella Inc., a Tokyo-based startup that's developing cell therapies for cancer. "This is a completely new science, so commercialization will take a while," Fujiwara says. "But cell-based therapy will be important in the future."

Home therapy is a business where Asahi Kasei is already active through its alliance with NxStage Medical, Inc., the world leader in home dialysis machines. The two firms are building a factory in Germany, the first phase of which should come online this year.

To explore the future of at-home care, Asahi Kasei built a demonstration house in 2011 that included a "home health zone." While many regulatory and remote-monitoring issues remain to

be resolved, there's no denying the dramatic quality-of-life benefits that home therapy offers. A patient getting traditional clinical-based dialysis may end up dedicating three whole days



a week to commuting and treatment. "Home therapy is more efficient, less disruptive, and may well be more economical," Fujiwara explains. "Patients can get treated while they're sleeping or have gentler, more frequent treatments, which is often more medically effective as well."

All Asahi Kasei's efforts in the field of health care, Fujiwara adds, reflect its commitment to creating new value for the society of tomorrow while contributing to better levels of health and comfort for people worldwide. ◊

## **GAINING CRITICAL MASS**

*Zoll CEO Richard A. Packer discusses the recent merger with Asahi Kasei*

### **WHAT ARE THE PLUSES OF THE MERGER FOR ZOLL?**

Having more resources to save more lives in more places throughout the world is probably one of the most significant advantages for Zoll. The other is the ability to expand our global reach so we can grow larger, stronger, and faster in high-growth markets. This will be particularly true in Japan, but also in China and other developing countries. This next phase of Zoll's growth promises to be the most exciting one yet.

### **WHAT ABOUT THE BENEFITS FOR ASAHI KASEI?**

By acquiring Zoll, Asahi Kasei has moved into the critical care space, which is an exciting new growth area for the company. Zoll's dozens of products—both capital equipment and software—that are now part of Asahi Kasei's extensive product portfolio provide a global platform that has the potential to revolutionize critical care by enhancing the quality and length of life for millions of people

around the globe. Zoll also gives Asahi Kasei the infrastructure to expand its health care business in the United States.

### **DO THE COMPANIES HAVE SIMILAR VALUES?**

Absolutely. Asahi Kasei's desire to constantly innovate to improve life for people around the world is perfectly aligned with Zoll's mission of improving people's lives by improving outcomes. Both companies share the same essential core values, with open communication being paramount. Asahi Kasei Group's values of sincerity, challenge, and creativity line up nicely with our desire to foster a company culture that values each employee and thrives on a self-motivated entrepreneurial spirit.

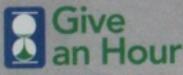
Richard A. Packer, CEO  
Zoll Medical Corp.





The Wounds of War are  
not always Easy to See.

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Give  
an Hour

Give help | Give hope

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Pop Culture  
Ingredients from  
the asparagus-and-  
beet salad served  
at New York City's  
Rouge Tomate, the  
first U.S. restaurant  
to showcase the  
Sanitas Per Escam  
(Health Through Food)  
nutrition-certification  
program

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# The Culture

50 POP CHART World's ugliest dog! / 52 ENVIRONMENT  
The bike wars / 56 FOOD Certified healthy / 58 TRAVEL  
Pop-up hotels / 60 TUNED IN Twilight of the antihero

Photograph by Grant Cornett for TIME

# Pop Chart



## GOOD WEEK / BAD WEEK

### Mugly

The U.K. pup won the unique honor of World's Ugliest Dog.

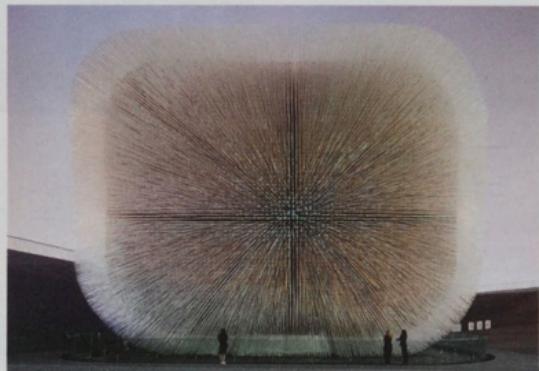
### David Beckham

The hunky soccer star wasn't selected for the British Olympic team.



## FAUXMANCE With This Ring, I Thee Distrust

Would-be philanderers, beware! A new ring on TheCheeky.com imprints "I'm Married" onto its wearer's finger—visible after he or she takes it off. For an extra fee, the \$550 titanium band will then scream, "Oh, hell no!" and call the spouse. (We wish.)



**LONDON LOOK** Heatherwick Studio is known for avant-garde design, including the 65-ft.-tall *Seed Cathedral* (above), Britain's pavilion at the 2010 Shanghai Expo, whose 60,000 optical strands each contain a seed. The firm's work is on display at the Victoria and Albert Museum through Sept. 30.

### QUICK TALK

## Lisa Kudrow

On *Web Therapy* (airing Mondays on Showtime), Kudrow plays a frenetic shrink who counsels patients via webcam—a.k.a. "the dumbest, worst idea in the world," she says. Which is why it makes such entertaining television.

—DAN MACSAI

### Appropriately enough, *Web Therapy* started as a Web series. And it was sponsored by Lexus?

Yeah, each episode was a three-minute session. And we were all so curious about how it would work. Would it be interesting enough just to have two faces on a computer screen talking to each other? I was really pleasantly surprised. And Lexus was great. They gave us total creative freedom. **Did they also give you a Lexus?** No! But I always drove a Lexus anyway. It would be weird to say, "Listen, I already have one. Do you wanna, uh, give me some money or something?" **I mean, you were starring in their flagship Web show ...** They're extremely valuable Web show! [Laughs.] But I do think it's done well by them. **Yeah, especially with the Showtime pickup. So, what's next for you?** We'll see. I've been acting part time lately, and that's been so perfectly great. **You could always record a single. That's very en vogue right now.** Like a dance number? A club song? Yeah, I should. It'd be good to Auto-Tune me to sound worse, though. That'd make my single sound different!

No, this is not  
a giant cube-  
shaped blowfish



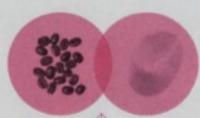
## CANDY Bugging Out

Chapul, a new start-up trying to sell cricket energy bars in the U.S., has been met with a chorus of "Ew's" from the Internet. But that's nothing compared with the strange sweets we searched out.



### Wasabi chocolate bar

Made by Kit Kat in Japan



### Caffeinated marshmallows

Made by Caffex



### Ghost-chilli caramels

Made by Theo



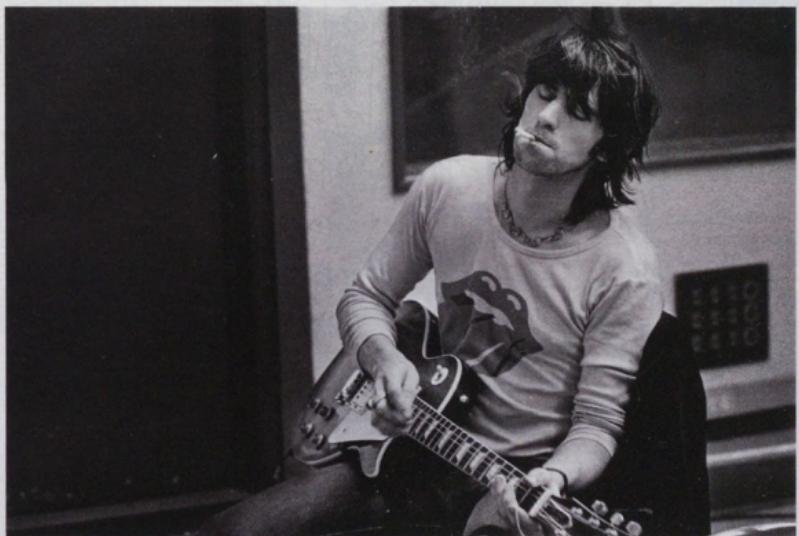
### Chocolate-covered slugs

Made by Hotlix



### Scorpion pops

Made by Hotlix



### MARSHALL MATTERS

Photographer Jim Marshall could capture rock legends like nobody else—Bob Dylan crossing a littered sidewalk, Miles Davis leaning on a boxing ring's ropes, Keith Richards (left) getting lost in a jam. To see more, visit [lightbox.time.com](http://lightbox.time.com).



### NOVELTIES Finger Paint

Many Crayola products inevitably wind up all over your hands. In this case, however, that's the intent: its new line of nail polish, available at [FredFlare.com](http://FredFlare.com), features eight glittery shades, including robin's egg blue and cotton candy. And while they may seem better for doodling than mani-cures, we promise you'll be the coolest adult on the grade-school playground.

**VERBATIM**  
I'm just a guy  
in Gainesville, Fla.  
... not some  
international  
bone smuggler.'

**ERIC PROKOP**, paleontologist, after the government seized his 70-million-year-old tyrannosaurus skeleton, alleging the fossil was illegally collected from Mongolia.

### BIEBER FEVER

# 374,000

Copies of Justin Bieber's *Believe* shifted in its first week, making it 2012's biggest album debut. The pop star outsold his mentor Usher (whose record launched the week prior) by almost 250,000—but he can't have a celebratory drink for three more years.



Authorities said the dino could be worth \$1 million.

### WHOOPS

Youuuuuk!

At a Boston fundraiser, attendees booed when President Obama jokingly thanked them for Kevin Youkilis, who was traded from the Red Sox to Obama's hometown team, the White Sox. Or maybe they were shouting his nickname, Youk.

### 3 THINGS YOU DON'T HAVE TO WORRY ABOUT THIS WEEK

**1. Alec Baldwin's privacy.** The actor is reportedly sending his wedding invitations via text message the morning of the ceremony to evade paparazzi. Brb, 2 bux lol.

**2. Deepening bath-salts panic.** The so-called Miami cannibal had none of the designer drug in his system, only marijuana. Worst munchies ever.

**3. Uggie's legacy.** The *Artist* star became the first dog to cement his paw prints at Grauman's Chinese Theatre in Hollywood.





## Pedal Push

# Biking is on the rise, but is there room on the road for everyone?

By Bryan Walsh

JEFF FRINGS HAS A TALENT FOR ATTRACTING insults. Soda bottles have been hurled at his head without warning. He's been called unprintable names by people who don't know his actual name. He's been sideswiped and rear-ended and run off the road more times than he can count. Red Sox fans wandering through Yankee Stadium have been subject to less abuse from complete strangers than Frings has on the streets of his hometown, Milwaukee.

So what's his problem? It's simple: he's an avid bicyclist. Over the past few years, Frings—a 46-year-old photographer who

bikes well over 100 miles a week—has kept video of his rides, taken from cameras mounted on his helmet and his handlebars, because he wanted visual evidence of his encounters with aggressive drivers. (He now uploads the video to his website [bikesafer.blogspot.com](http://bikesafer.blogspot.com).) Frings has suffered more than a few injuries in scrapes with cars, but what really stands out is the gratuitous hostility. It's not just that inattentive drivers fail to give him the three feet of space required by law. It's that they're galled by his very presence. "They think that you don't belong on the road," says Frings,

"and they're trying to teach you a lesson."

In many ways, there's never been a better time to be a bicyclist in the U.S. After decades of postwar decline—matched by the rise of the car—the number of Americans biking regularly has been increasing steadily over several years. More and more people are using bikes to commute to work and just to get around, in cities such as Washington and Minneapolis, which have some of the country's highest cycling rates. Progressive mayors in Chicago, San Francisco and elsewhere have been laying down bike lanes and replacing car parking spaces with



bike racks. Bike shares, which lend out two-wheelers for short trips at low fees, are blossoming around the U.S., with a 10,000-bike program sponsored by Citibank launching in New York City this month.

But even in the most pedal-friendly cities, cyclists can still feel they're biking against traffic, legally and culturally. It's as if just enough Americans have started cycling to prompt a backlash—call it a bikelash—as drivers and pedestrians ally against these rebels usurping precious traffic space. Is there room on the road for everyone?

There's no more contested space to explore that question than New York, which almost certainly has the most crowded streets in the U.S. Though New Yorkers ride the nation's most extensive transit system, more than 600,000 cars crawl into lower Manhattan each day, leading to miserable congestion. "All that traffic has a major economic cost," says transport analyst Charles Komanoff.

One way to relieve some of that congestion—while improving public health and cutting greenhouse-gas emissions—is to take people out of cars and put them onto

bikes. So over the past several years, Mayor Michael Bloomberg's department of transportation has set about trying to make New York into a bike-friendly city. It hasn't been easy. For years, only semi-psychotic bike messengers and minimum-wage-earning deliverymen would brave the asphalt jungle on two wheels. But what Mayor Mike wants, Mayor Mike usually gets. More than 290 miles of bike paths have appeared under Bloomberg's administration (for a total of 700 miles), including segregated, protected lanes on major streets like Manhattan's Ninth Avenue. The new



Citi Bike system, with 600 stations around town, is modeled after successful programs like the Capital Bikeshare in Washington and the Vélib in Paris, which have significantly boosted cycling rates. A recent survey estimated that the D.C. program reduced driving miles per year by nearly 5 million. As full-time cyclist and part-time musician David Byrne wrote recently, "This system is not geared for leisurely rides ... This is for getting around."

#### A 'Crazed Campaign'

BLOOMBERG'S POLICIES—IMPLEMENTED by his high-profile transportation commissioner, Janette Sadik Khan—have produced results. More than twice as many New Yorkers commuted to work by bike in 2011 as in 2006 (rising to nearly 19,000 from 8,300). But drivers have pushed back against the bike lanes, which take away precious road space in a city where parking can be an exercise in frustration. And many pedestrians have complained about a plague of cyclists whizzing over sidewalks and through stop signs. The reliably right-wing *New York Post* labeled the bike-lane expansion as a "crazed campaign," while a 2011 study found that more than 500 New York pedestrians a year make hospital trips after being hit by bikes. "The rush to place 10,000 bicycles on our streets risks significantly exacerbating the number of injuries and fatalities of both bikers and pedestrians," said New York City comptroller John Liu in a press conference at the end of June.

A deeper drill into the numbers, however, reveals that cyclists are far more threatened than threatening. A study by Monash University in Australia that looked at driver-cyclist collisions found that nearly 90% of cyclists had been traveling in a safe and legal manner just before crashes, while vehicle drivers were at fault for more than 80% of the collisions. A 2011 study of Barcelona's bike-sharing program found a tiny increase in the risk of death from traffic accidents, but one that was more than balanced out by deaths that were prevented as a result of

the health benefits of regular cycling.

Even cyclists admit that some of their ilk can be maddeningly mercurial, blowing through intersections and weaving through traffic. But it should be pretty clear that a 20-lb. bike is considerably less dangerous than a half-ton car. Last year 241 pedestrians or cyclists were killed by motorists in New York City, yet only 17 of those drivers faced criminal charges. The New York police department—as is the case with most police forces around the country—almost never investigates a car-on-bike or car-on-pedestrian accident unless the victim dies or the driver is found to be under the influence. "If you're a cyclist who's been hit by a motorist in a couple-ton vehicle, that's like deadly assault," says former Olympic cyclist Robert Mionske, now a lawyer in Portland, Ore. "To have an officer say that there's nothing they can do is incredibly frustrating."

#### Creating a New Normal

SO WHY ARE CYCLISTS SO HATED? BLAME social-identity theory. Cyclists can be dismissed as a sub-subculture, one far removed from an American mainstream defined by cars and drivers. To a driver, a cyclist is an unpredictable outsider, someone implicitly less worthy of respect—or for that matter, of space on the road. And if one biker blows a red light, that's evidence that all these outsiders are careless, whereas a lawbreaking driver isn't held up as proof that all drivers are thoughtless. (It doesn't help that the very act of driving can blunt your patience with and

sympathy for those outside the climate-controlled bubble of your car.)

It's not that drivers are unusually susceptible to this kind of confirmation bias. There are simply far more drivers than bikers operating in towns and cities designed for cars. "People tend to look at the out group and overgeneralize them," says Ian Walker, a professor of traffic psychology at the University of Bath in Britain, "while you tend to underplay the differences within your own group."

The brains of the U.S.'s more than 200 million licensed drivers can't be rewired. But there are ways to ensure that bikes, cars and pedestrians can all safely use the street. In the Netherlands, for example, drivers are drilled early to watch out for cyclists on the road, and bikers enjoy physically separated lanes. (A Dutch driver is trained to reach over her body with her right hand when opening the door to exit, which allows her to check easily for any cyclists approaching from the rear.) The Netherlands isn't the only European country where bikes have become the norm. In Denmark, 18% of trips are taken by cycle, and London's bulky gray "Boris bikes," named after the city's Tory cyclist mayor, have transformed how residents get around the British capital. But Amsterdam is a two-wheeled heaven. "In America you can feel unwelcome, but in Amsterdam the system accepts you," says Andy Clark, president of the League of American Bicyclists. "You don't feel like you're outside the law."

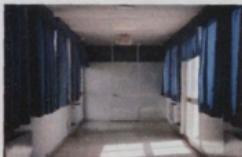
Those rules and regulations have helped make cycling ubiquitous and safe in the Netherlands, where 26% of daily trips are by bike. But more than any law, it's that sheer number of cyclists—men and women, kids and the elderly—that really makes the difference. No U.S. city is anywhere near Amsterdam when it comes to pro-cycling policies. (Portland, Ore., where nearly 6% of people commute to work by bike, comes closest.) But as biking gathers speed across the U.S., the out group could become the in group. And maybe poor Jeff Frings will be able to ride in peace.

**Cyclists can be dismissed as a sub-subculture, removed from an American mainstream defined by cars and drivers**

# TIME LightBox

A blog by the photo editors of TIME.

From top left: Yan Kaczmarek/NOOR; Marco Grib; Christopher Morris/WI; Marco Grib; George Sturman/CC; Peter Hapak; Lucie Nemec; Peter Hapak; Naji Kazzaz/NOOR; Yuli Kozlevitz/NOOR; Dominic Nahr/MAGNUM. Photo:granted for TIME.



See for yourself at [lightbox.time.com](http://lightbox.time.com)



# Food

## Certifiably Good. Chefs seek a new culinary seal of approval for healthy dishes

By Alice Park

IT'S IMPRESSIVE ENOUGH FOR a chef to get a Michelin star. But Jeremy Bearman managed to earn his without the help of a key ingredient: cream.

His Manhattan restaurant, Rouge Tomate, also uses very little butter. Bearman is steering clear of these staples of fine dining because he is following a new set of culinary guidelines—voluntary standards not unlike architecture's LEED certification, which denotes a building's energy efficiency. The new system is called SPE, short for *sanitas per escam* (Latin for "health through food") and stresses not only using local, seasonal ingredients but also combining them in ways that maximize their nutritional value. The emphasis on nutrition isn't just lip service; a dietitian works closely with Bearman to ensure that all his dishes are healthy as well as haute cuisine, telling him to swap out the duck fat here, add some more whole grains there.

Until recently, however, Rouge Tomate's patrons were none the wiser. The restaurant's owner, SPE creator Emmanuel Verstraeten, says he intentionally kept the good-for-you message off the menu. "We didn't want to scare people away," he says. Some diners still equate healthy with bland.

But convinced by the interest expressed by other chefs in his SPE principles, Verstraeten is ready to go public. This spring, the Belgian-born restaurateur launched a certification program that invites U.S.

chefs to submit recipes—or entire menus—for revision to meet the criteria he developed with the help of several nutrition experts. The program's 90-page charter details such things as eking more iron from plant-based foods by combining them with vitamin C-rich produce—hence those strawberries in that expertly tossed spinach salad. In dishes with naturally salty ingredients like olives or soy sauce, adding foods rich in potassium such as raisins and plums or even protein like halibut and salmon can counteract salt's effect in raising blood pressure. Tomatoes, meanwhile, are better in a sauce rather than served raw because healthy oils help release the cancer-fighting compound lycopene, which is fat soluble.

Verstraeten's goal is for the SPE logo to become a selling point at restaurants—and a moneymaker for his consulting firm. For about \$300 or less per dish, it will help restaurants rework their recipes so they can get the SPE seal of approval.

A handful of chefs have already signed up, including Guillaume Hazaël-Massieux, at La Bécasse in Maple City, Mich., who submitted three dishes for certification. He's eager to see how his clients react, though he realizes that a logo alone won't persuade people to eat healthier. "This is a first good step to making restaurant food better," he says. As long as it continues to taste good too. ■



Rouge Tomate,  
New York City

Chef Jeremy Bearman earned a Michelin star for how good his food tastes and SPE certification for how healthy and sustainable his ingredients are. To maximize the nutritional content in his **octopus salad**, left, he paired the lean protein—which is a rich source of B-12, selenium and potassium as well as omega-3 fats—with chickpeas, which are high in fiber. Low-calorie Moroccan spices provide flavor and lessen the need for sodium. At right, Bearman's locally sourced, antioxidant-loaded **beet-and-asparagus salad** includes a quail egg for protein and a dressing made from fat-free Greek yogurt and whole-grain mustard to reduce calories.



La Bécasse,  
Maple City, Mich.

Chef Guillaume Hazael-Massieux was already using fresh, locally grown ingredients, but to make his **glazed scallops** healthy enough to earn SPE certification, he had to lower the amount of oil used in preparing the vegetables as well as the glaze on the scallops. The revisions cut calories by 17% and fat by 41%. The dish now provides 25% or more of the daily recommended intake of nine vitamins and minerals, and the vegetables and pineapple salsa qualify as two servings of fruit and vegetables.

The Living Room,  
East Hampton, N.Y.

The restaurant's **roasted chicken** had to undergo a recipe overhaul in order to get certified. The changes included replacing butter with lower amounts of healthier oil and swapping out potato puree for potatoes roasted in their skins, which contain fiber and vitamin C. Now the dish provides 25% or more of the daily recommended intake of 10 vitamins and minerals, 39% fewer calories and 52% less fat.



# Travel

## Hotels That Hit the Road. These pop-ups go wherever the action is

By Kristine Hansen

FIRST THERE WERE POP-UP BOUTIQUES, with their short-term leases injecting new life into vacant storefronts. Then came pop-up restaurants, as itinerant chefs began borrowing the kitchens of their vacationing comrades. But, oddly enough, it is the hotel industry that is taking the here-today-gone-tomorrow concept to a new extreme. To coincide with the Summer Olympics, England's Snoozebox is erecting a temporary 320-room hotel out of shipping containers in a park 90 minutes northeast of London. Each room comes with a bathroom, an air-conditioning unit, a key card and wi-fi access, and the whole hotel can be assembled—and ready for guests to check in—within three to four days of arriving at a new location.

Snoozebox, which rents its rooms for \$100 to \$300 a night and was valued at nearly \$35 million on the London Stock Exchange in May, installed a similar pop-up on the grounds of Windsor Castle for the Queen's Diamond Jubilee, and in August it will move on to the Edinburgh International Festival. The company's rivals are relocating for concerts and car races, with some, including the Pop-Up Hotel, based in Somerset, England, modeling their custom-designed canvas tents after those you might find on luxury safaris. Across the pond in California, Shelter Co. this spring began offering offbeat brides—and anyone else looking to have an elegant soirée in the woods—tents outfitted with 400-thread-count sheets, down comforters, coolers of wine and prices on a par with the Four Seasons'. Weekend rates begin at \$750.

Snoozebox and its lower-impact brethren provide truly portable lodging. But another pop-up purveyor is doing something sneakier: renting out existing hotels, stocking them with organic bath



products and maybe some new throw cushions and then jacking up the prices. That's essentially what Berlin-based Design Hotels did in May when it took over the San Giorgio Beach Hotel on the Greek island of Mykonos for this year's high season. To spruce up the beachfront property, which was built in the 1990s and is a few hundred yards from a big nightclub, decorators brought in wicker chandeliers, director's chairs and sea-grass rugs and renamed the place San Giorgio Mykonos.

"You can spin hotels around that have great bones but are getting really tired," says Design Hotels CEO Claus Sendlanger, whose company's 231 hotels include the prestigious Gramercy Park Hotel in New York City and the Dolder Grand in Zurich. The website for the

**Another pop-up purveyor is doing something sneakier: renting out existing hotels, stocking them with organic bath products and then jacking up the prices**



1



**1.** In England, the Pop-Up Hotel is borrowing a page from Africa's luxury safaris by setting up custom-designed canvas tents for car races, concerts and other outdoor events



2

3

4

revamped San Giorgio has pictures of straw hats slung over chair backs and emphasizes the hotel's ability to help travelers with "relaxing from their daily life and just being themselves." "Through the images we use and the language we use, it attracts the creative class," says Sendlinger. (And by "creative class," he means people who are willing to rough it for \$189 a night.)

Design Hotels' first pop-up experiment, in Tulum, Mexico, took over the 15-year-old Cabanas Copal last December. For six-months, the company renamed the Copal's 85 cabanas the Papaya Playa Project, talked up its "panfried" fish and locally grown aloe vera and raised room prices from an average of \$60 per night to \$100. During a week-long stay in January, Kevin Gallagher, a

Web designer from Langhorne, Pa., who had vacationed at the Copal three times before, was surprised by what he got in return for the higher prices. "One night they brought in a lounge singer from Berlin, sort of cabaret meets Burning Man," he says. "But as far as the basics, some of it was lacking." There was only one sun bed on the beach and a few stray umbrellas, so he and his wife parked themselves on towels. Also absent was the Copal's customary roving waiter to take drink orders.

So when Gallagher got home, he logged on to a travel site and warned prospective visitors about the minimalist makeover. "At first we thought somehow the cabanas were bigger," he wrote on the site. "Then it hit us. There were no chairs or tables." Eventually he and his wife

figured out the beds were smaller too. That's where the key difference between a pop-up hotel and a temporary boutique comes in. "For a pop-up store, you're there for an hour," says Julie Sturgeon, a travel agent in Indianapolis. "With a pop-up hotel, you're there for seven hours or more, so customers have time to be critical."

Then again, if a pop-up flops because of problems with the marketing materials or customer service, everything can be rebranded with minimal effort. That's exactly what Design Hotels is getting ready to do. In September it will rent out the Copal again, this time for a seven-week stint as a yoga retreat. At least with its newest name, PopUp Ashram, the guests won't be expecting anything posh.

# Tuned In



## The Greatest American Antihero Walter White is badder than ever, but has dark TV become a cliché?

By James Poniewozik

WHEN LAST WE SAW WALTER WHITE ON *Breaking Bad*, his parting words were: "I won." A chemistry teacher turned crystal-meth dealer, Walt (Bryan Cranston) had just killed his drug lord boss turned nemesis, Gus Fring (Giancarlo Esposito), a crime that involved engineering a murder-suicide, setting off a bomb in a retirement home and poisoning (though not fatally) a child. Walt—who has always told himself he is a decent man, a principled man, a

family man—had defeated not only Gus but also his own last remaining scruple.

Now Walt is king: king of the greater Albuquerque, N.M., meth business and of cable drama's Age of the Antihero. The antihero (or, less often, antiheroine) is not a simon-pure good guy or a traditionally, absolutely evil bad guy. He might, like Tony Soprano, be a criminal, but one we see in the mundane context of raising a suburban family. She might be like litiga-

tor Patty Hewes of *Damages*, determined to extract justice for her clients but also ruthless to the point of cruelty. *Mad Men's* Don Draper is a heel and a fraud but a suave, charming one with a secret past of suffering. *Dexter* is a serial killer, but he has a code. *Sons of Anarchy's* Jax Teller gives us Hamlet as a biker-gang prince. These brooding, scowling, self-destructive characters have produced some of the past decade's best TV. They've also done it so often, in such similarly brooding, scowling, self-destructive ways, that what was once a reaction to TV's formulaic good guys and bad guys is in danger of becoming a formula itself.

Walt, as suits a chemist, is that formula's purest, most crystalline distillation.

He's not just a criminal who's like us—the dues-paying, tube-watching civilian audience—he was one of us, punching the clock and moonlighting at a car wash until a cancer diagnosis pushed him to turn to crime to earn a nest egg for his family. Now, with Walt's cancer in remission and Gus dead, Walt could walk away from the meth business. Or could he? Could he live without power, fear and respect? Does he know how to be a good man anymore?

The title of *Breaking Bad*—now entering its fifth and final season, whose first half begins July 15 on AMC—is a slang term for the process of turning criminal, as creator Vince Gilligan has explained. It's a telling choice of phrase, describing evil not as an immutable character trait but as a turn from one side to another, a drift across the yellow line on a late-night drive. *Breaking Bad* shows that every sin Walt commits as a drug dealer grew out of something that was in him before he cooked his first batch of crystal. His vanity—he was a star graduate student and chemist before his career went sour—told him he was entitled to success. His contempt for life's losers let him excuse cooking poison for addicts. And his febrile love for his family let him rationalize any harm he did to anyone else. "We do what we do for good reasons," he tells his guilt-stricken wife Skyler (Anna Gunn) in the new season. Walt's goodness is real, but it is narrow.

Walt's choices might not be ones you would ever make. But his problems—medical bills, debt, midlife crisis—could be anyone's. That sense of audience connection, if not complicity, is the essence of the antihero genre. *The Shield*, about a corrupt but talented cop, asked what price we'd pay for safety. *Deadwood* and *Rome* asked whether great empires can

## The philosophy of antihero drama is that evil can be latent anywhere, in anyone, and that we may even depend on it

be built by good men. The philosophy of antihero drama is that evil can be latent anywhere, in anyone, and that in some ways, we may accept or even depend on it.

Cable's antihero era began in 1999 with *Tony Soprano*, and since then we've had a decade-plus of real-life news about betrayed trust: bad mortgages, sexual abuse in colleges and churches, prisoner torture, business fraud. These stories involved some flat-out monsters (see Jerry Sandusky) but also a lot of enablers and go-alongers, bosses who didn't punish, colleagues who didn't blow whistles—people who weren't exactly evil but who found, when tested, that they couldn't make themselves be good enough. (Not unlike Skyler, who decided to stand by her husband and launder his drug money.) Were the rest of us, shaking our heads, better than them? Or just lucky that we never had to find out?

Antihero dramas let the viewer take a kind of moral test drive. *Breaking Bad*, in particular, was structured to show how smaller crimes become bigger ones, how omission becomes commission. Walt would cook meth with his former student Jesse (Aaron Paul), but he would never kill. Except for killing drug gangsters in self-defense. And except for letting Jesse's unconscious, heroin-addicted girlfriend die of an overdose to protect himself. And except for getting Jesse to

shoot—in cold blood—a chemist Gus was grooming to replace Walt. (Jesse starts the show as an amoral punk but becomes more conscience-stricken as Walt gets colder.)

*Breaking Bad* has told this story with epic sweep, and its fifth-season debut is as unflinching as ever. But over the TV dial at large, the antihero genre is showing its age. Some of cable's more recent dark serials—like Starz's Miami mob story *Magic City* and its blustery political drama *Boss*—have felt lifeless and mechanically shocking. Several of TV's reigning antiheroes have an expiration date: Don Draper will run out of 1960s in two seasons, and both *Damages* and Showtime's *Weeds* (cable's other citizen-turned-pushover story) are starting their final seasons. After all these years, we get it: yeah, the world can be rotten. Edgy has started to feel like the new safe.

The antihero is probably here to stay on TV, just like doctors, lawyers and eccentric detectives. But like them, the archetype needs to evolve to stay interesting. Maybe it could be a little less anti and a little more hero: in Showtime's *Homeland*, CIA agent Carrie Mathison (Claire Danes) has deep flaws, but ultimately we want her to catch the bad guys. Ditto lawman Raylan Givens in FX's *Justified* (whose star, Timothy Olyphant, previously played rage-addicted antihero sheriff Seth Bullock on *Deadwood*). Maybe the antihero could be a little funnier—as with Louis CK's flawed but ultimately bighearted alter ego on TV's best comedy, *Louie*—and maybe a little less relentlessly macho: two of the past year's most compelling new antiheroes were Hannah Horvath and Amy Jellicoe on HBO's *Girls* and *Enlightened*, respectively, whose offenses are more social than sociopathic.

And maybe, crazy as it sounds, there could be compelling drama in plain old heroics. (DirecTV's *Friday Night Lights*, for instance, was earnest and hopeful but also one of the richest, most nuanced dramas of the decade.) Don't get me wrong: I'm riveted to watch Walter White's chemistry experiment come to its end. But maybe the most shocking thing an ambitious drama could do next is show us what it means to break good.

BREAKING BAD: MADMEN: FRANK OCKENFELS/AMC; DAMAGES: EVERETT; SONS OF ANARCHY: PARASITE/SHOWTIME; HOMELAND: BRIAN SKRANTZ/SHOWTIME



**DON DRAPER**



**PATTY HEVESI**

The brilliant litigator on *Damages* is determined, righteous—and ruthless to the point of cruelty



**JAX TELLER**

The brooding ex-con antihero on *Sons of Anarchy* is Hamlet as a biker-gang prince



**CARRIE MATHISON**

The CIA agent on *Homeland* has deep flaws, but we're always rooting for her

# Joel Stein



## All He Can Eat

I hate all-inclusive resorts. Unfortunately, my 3-year-old son adores them

**T**HERE ARE THINGS NO ONE CAN tell you about having children. No one can tell you that they'll respond to all the newness with more thrill than fear or that they'll be more physically affectionate than a Thai hooker. And no one thinks to tell you that they'll have horrible taste in vacations.

I totally get that my 3-year-old has limitations: he can't bike across the Alps; he can't taste wines at châteaus in Bordeaux; he can't sleep with hookers on a sex tour of Thailand. But that doesn't excuse his choice of hotels. Now I've never been a connoisseur of hotels: they're just somewhere you sleep for a few hours. I know women find thick mattresses, crisp white sheets and interesting wallpaper an aphrodisiac, but they just make me want to have tea and read. If I'm going to have the kind of sex I want, I'm going to feel much better about messing up a Motel 6.

**But I should have put a little more effort** into choosing a hotel on our trip last month. Because what I didn't know until my lovely wife Cassandra, Laszlo and I checked into this hotel was that it was an all-inclusive resort. At first this sounded like a good thing. I figured it meant wireless Internet, a minibar and in-room movies. But it was much less like traveling-salesman paradise, much more like house arrest. They snapped a plastic bracelet on our wrists so everyone would know to give us whatever meals and beverages we asked for. I should have had some insight into what the quality of the food and drinks would be, since the only other places they use the bracelet system to dispense free food and drinks are hospitals.

Laszlo, though, loved the place. He loved going to the same place for the same buffet meal three times a day. He loved picking his own food. He loved that pizza and hamburgers were put out between meals. He loved being able to run around the huge lobby. He loved the giant pool with the borrowable inflatable toys and a bar where they'd make him frozen, fruity drinks. He didn't care that we flew 4,000 miles to wind up somewhere that looked just like America. That's because 3-year-olds are stupid. I'd always wondered how places like Sandals exist, and now I know. It's because the majority of our economic decisions are made to appease small children.

Laszlo was so empowered by the ease, repetition and manufactured jolliness that he never wanted to leave to walk around in the humid, squalid city we went to visit. Eventually, though, we forced him out. I thought it went pretty well. I, apparently, was wrong. "When



we were walking around that messed-up neighborhood and it felt a little sketchy, I was like, 'Forget all this stuff,'" Cassandra said to me in slightly more colorful language. "I'd feel like an uncouth person if we'd got mugged there and Laszlo was with us. People would be like, 'What the forget were you thinking?'" I don't know if worrying about how other people would judge you for endangering your child is maternal, but it's at least maternal adjacent. Then she added something definitively maternal: "Maybe having a kid made me less snobby. All kids love cheap ice cream and Mickey Mouse, and watching them enjoy it feels good."

**But I'm not getting soft. I have become** many, many people I promised myself I would never become. I'm a husband and a father. I don't hang out with my high school friends all the time. I don't go to rock concerts. I wear one of those plastic bite guards to sleep that I always assumed were made so women would have a clear way of signaling that they weren't having sex that night. But I will not be the resort-vacation guy. I will be the guy with the kid running around the restaurant ruining everyone else's seven-course meal that I can't enjoy because I'm busy chasing him. I will be in a hotel in the up-and-coming part of the city, sharing a tiny room with thick mattresses, crisp white sheets and interesting wallpaper and not having sex because my son is in the cot right next to ours. I will be the dad sweating profusely with a crying kid who is way too big to be in a baby carrier on my back. People will assume I am Australian.

When Laszlo grows up and actually wants to go to cool places with me, I'll be so old we'll have to go on cruises. And the smartest, cruellest part of my plan is that not even a therapist will listen to someone complain about his parents taking him on an all-inclusive vacation.

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# 10 Questions

## Actress Sigourney Weaver on political families, aliens, elves, weird fans and how she forgave her drama teachers

**In your new series *Political Animals*, you play a former First Lady who runs for President, loses and is appointed Secretary of State. Why does this sound familiar?**

I think superficially it does bear some resemblance to Mrs. Clinton's story, but it's actually inspired by a lot of the families that have been in the White House and who want to get back into the White House.

**Which Secretary of State do you think would make the best actor?**

Probably all of them. I think James Baker is a very interesting character. I'd rather see him as an actor than as Secretary of State.

**Your character says campaigning is an "Olympic sport of hypocrisy." Do you feel that way about the campaign now?**  
It's a pretty daunting thing to watch. As dysfunctional as we are on *Political Animals*, it's fiction—much easier to watch.

**You were a student at Stanford in 1968 and involved in student politics. Is it true you lived in a tree house?**  
I did for a time.

**And dressed like—**  
An elf.

**So how do you feel about that time now?**  
Napalm was invented at Stanford University, so one of the reasons we were protesting was to make sure that didn't

continue. I think we stopped the university, and we helped stop that war.

**Your father was a TV executive. Yet you haven't done that much TV in your career. Are those things linked?**

He ran NBC and started the *Today* show and *The Tonight Show*. Part of it

was, I didn't want to ride on the old man's coattails, so I avoided TV like the plague. I was offered this [show on USA Network] just as I was realizing that TV was a cool place to work. A series can really take the time to build and layer and tell a different kind of story. It's delicious. It's like a stew instead of a little vegan meal.

**Would you like to be starting out in the business now?**

Even though the industry has changed, you can bring the same kind of quality. We did in

Weaver, who has three Oscar nominations, says, "I think any award you have to campaign for is probably not worth winning."



**Avatar.** To me it's always been about fighting for quality. We don't see all the crap that they made in the '20s and '30s and '40s and '50s, but they made it.

**If you got to do it all over again, would you still do all four *Alien* movies?**

Yes, I think I would. But I would make sure there was a fifth one that was satisfying, that we didn't go to earth.

**I'm sure your Ripley character has groupies. Do your other roles?**

Science fiction has very passionate fans. But there are fans for *Gorillas in the Mist*, and there are weird *Working Girl* women coming up to me and saying, "Your character was the good one. She took your clothes, and she took your man, and you were right."

**You once said you hoped the Yale drama teachers who didn't believe in you in grad school were sitting at home watching your movies, eating cat food from a can. Have you moved on?**

I think those people probably aren't around anymore. They probably ate too much cat food and didn't make it. But I'm involved with a Manhattan theater called the Flea. It's everything I would have wanted drama school to be. My karma has been to part of creating something that I would have loved. So I'm over it. I forgive them, I let them go—they can now eat regular tuna fish with the rest of us.

—BELINDA LUSCOMBE

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